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(27,251)

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919

## No. 496. 161

HARTFORD LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

Cecelia Blincoe, Administratrix of the estate of ROSA BARBER, deceased

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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UNITED STATES OF AMERICA,
*State of Missouri, ss:*

Be it remembered that heretofore, to-wit, on the 9th day of December, 1918, there was filed in the office of the clerk of the Supreme Court of the State of Missouri, in a cause between Rosa Barber, Respondent, and Hartford Life Insurance Company, Appellant, No. 21,314, a certified transcript of the record entry of the judgment of the Circuit Court of Johnson County, in the State of Missouri, and of the filing of a motion for a new trial, the order overruling said motion, the order of leave to file a bill of exceptions, the filing of a motion and affidavit for an appeal, the order sustaining said motion for appeal, the order allowing an appeal, the order fixing amount of the appeal bond, and leave to file the same, and the filing of an appeal bond; which said certified transcript, so filed, is in the words and figures following, to-wit:

STATE OF MISSOURI,
*County of Johnson, ss:*

Be it remembered, that on the twenty-first day of November, 1918, at the regular October Term A. D. 1918 of the Circuit Court within and for the County of Johnson, in the State of Missouri, held at the Court House in the City of Warrensburg, in the county aforesaid, it being the sixth day of said Term, the following among other proceedings were had, made and entered of record in the said Court, to wit:

#4619.

ROSA BARBER, Plaintiff,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant.

*Judgment and Order Allowing an Appeal.*

Now at this day, come again the parties aforesaid, by their respective Attorneys herein, and again comes the Jury trying this cause, and being called and all appearing in Court, the trial of this cause is resumed; and after hearing all the evidence, the Jury is instructed by the Court as to the law governing this cause, whereupon the argument of counsel is made and the Jury retire to their room in charge of the Sheriff, to consider of their verdict; and after due deliberation, the Jury having agreed upon a verdict, they are conducted into Court by the Sheriff having them in charge, and the Jury in open Court here, return the following verdict in this cause, to wit:

We, the Jury, find the issue in favor of the Plaintiff and assess her damages at the sum of $2,974.30, together with the sum of $200.00 for vexatious delay, and the sum of $750 for Attorneys' fees, making in the aggregate the sum of $3,924.30.

H. H. HUDSON,
*Foreman.*

It is therefore ordered, and adjudged by the Court here, that the said Plaintiff have and recover of and from the said Defendant, Hartford Life Insurance Company, the said sum of Two Thousand Nine Hundred and Seventy-four and thirty hundredths ($2,974.30) Dollars, damages assessed and the sum of Two Hundred ($200.00) Dollars for vexatious delay, together with Attorneys' fees in the sum of Seven Hundred and Fifty ($750) Dollars, making in the aggregate the sum of Three Thousand Nine Hundred and Twenty-four and 30/100 Dollars as found by the Jury to be due and owing as aforesaid, and her costs and charges herein accrued, and that she have execution therefor.

And now said Defendant aforesaid, by its Attorneys, files its Motion for the Court to set aside and for naught hold the verdict and Judgment returned and rendered in this cause and to grant it a new trial thereof; which said Motion for a new trial of this cause, is now taken up and submitted to the Court, and the Court after seeing and hearing and duly considering the same, doth order that said motion be, and hereby is overruled. Whereupon the said Defendant, by leave of the Court, takes until on or before February 15th, 1919, in which time to file its Bill of Exceptions in this cause.

And now said Defendant, by its Attorney and agent in this cause files its motion and affidavit for an appeal in this cause to the Supreme Court of the State of Missouri; whereupon the Court after duly considering the same, doth sustain said motion, and doth order that said Defendant be, and hereby is, allowed an appeal in this cause to the Supreme Court of the State of Missouri; and that the amount of the appeal bond be, and hereby is, fixed at the sum of $8,000.00, and that Defendant be and is allowed ten days after the final adjournment of this Term of this Court to file the same, subject to the approval of the Clerk of this Court in Vacation thereof.

And afterwards, to-wit, on the sixth day of December, 1918, it being in time of the vacation of said Court, the following further proceedings were had, made and entered of record in said cause, to wit:

#4619.

ROSA BARBER, Plaintiff,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant.

*Appeal Bond Filed.*

Now on this 6th day of December, 1918, comes the Defendant aforesaid, by its Attorney, before the undersigned Clerk of this Court, in Vacation thereof, said October Term not yet having been finally adjourned and presents to the Clerk, for his approval and filing, its appeal bond in the above entitled cause, in the sum of Eight Thousand ($8,000.00) Dollars. And it appearing to said Clerk, that said bond is in the due form and conditioned as required by law, and is signed by the Defendant, Hartford Life Insurance Company, by A. W. Benton, Vice Pres. & Secy., The Fidelity & Casuality Co., of N. Y., by M. J. Martin, Attorney, said bond is by said Clerk approved, and said Defendant now files said bond in the office of the undersigned Clerk of said Court, and is made a part of the record in the above entitled cause.

J. M. CALDWELL,
*Clerk.*

STATE OF MISSOURI,
*County of Johnson, ss:*

I, J. M. Caldwell, Clerk of the Circuit Court within and for the County of Johnson, in the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record entry of the Judgment of said Court; the filing of a motion for new trial; the order overruling said motion; the order of leave to file a bill of exceptions; the filing of a motion and affidavit for an appeal; the order sustaining said motion for appeal; the order allowing Defendant an appeal; the order fixing amount of the appeal bond, and leave to file the same; and the filing of an appeal bond; all of which is entered of record at the Term of said Circuit Court, and on the days therein stated, in the above entitled cause, as the same now appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of Warrensburg, in the County and State aforesaid, this 7th day of December, A. D. 1918.

[SEAL.]

J. M. CALDWELL,
*Clerk.*

And thereafter, on the 12th day of March, 1919, the said appellant filed in the office of the Clerk of said Supreme Court its printed abstract of the record in said cause, which said abstract is in the words and figures following, to-wit:

IN THE

# SUPREME COURT OF MISSOURI,

DIVISION NO. 1.

APRIL TERM, 1919.

ROSA BARBER,
*Plaintiff-Respondent.*

vs.

HARTFORD LIFE INSURANCE COMPANY,
*Defendant-Appellant.*

No. 21,314.

Appeal from the Circuit Court of Johnson County, Missouri.
Hon. C. A. Calvird, Special Judge.

## ABSTRACT OF THE RECORD.

This is an action on an insurance policy, commenced June 17, 1911, which was tried upon the amended petition filed September 24, 1912, and which amended petition is in words and figures as follows (omitting caption and signatures):

## AMENDED PETITION.

Plaintiff for her amended petition for her cause of action against the defendant states that said defendant is a corporation duly incorporated according to law and at all times herein stated was engaged in the business of life insurance in the State of Missouri.

That at the time the contract or policy of insurance was entered into by defendant as hereinafter stated the corporate name of defendant was The Hartford Life and Annuity Insurance Company; that since said contract was entered into defendant has changed its name and is now doing business under the corporate name of the Hartford Life Insurance Company.

On the 4th day of September, 1893, the defendant, in consideration of the payment by Frank Barber of a certain sum of money and in consideration of the agreement by the said Frank Barber to pay it thereafter certain sums of money as the same might become due, executed and delivered to said Frank Barber a certain contract or policy of insurance whereby it agreed to pay upon the death of said Frank Barber to his wife, the plaintiff, if living, the sum of two thousand dollars ($2,000), which said policy is numbered 174416, and is herewith filed.

Plaintiff alleges that said Frank Barber died on the 5th day of June, 1910; that up to the time of his death the said Frank Barber had complied with all the conditions, stipulations and requirements in said contract on his part to be performed by him.

That in addition to the considerations paid by said Frank Barber hereinbefore mentioned, the said Frank

Barber at or soon after the execution of said contract deposited with defendant the sum of $20.00, which was received by defendant and placed to the credit of said Frank Barber, which has ever since been retained and is now retained by defendant and is now in the custody and under the control of defendant as a deposit. At the time of the death of said Frank Barber that upon said $20.00 deposit certain interest had accrued, which, together with said deposit, was in the hands and under the control of the defendant, and at the time of the death of Frank Barber for the benefit of said Frank Barber.

That plaintiff was the wife and is now the widow of said Frank Barber; that since the death of Frank Barber she has complied with all the requirements in said contract required of her; that said defendant, though requested so to do, and though the sum of $2,000.00 is due the plaintiff from defendant, yet so it is the defendant has hitherto vexatiously failed and refused and doth still vexatiously fail and refuse to pay the same, so that the same is now due plaintiff from defendant and remains unpaid.

Wherefore, plaintiff prays judgment against the defendant for said sum of $2,000.00, with interest thereon at the rate of 6 per cent per annum from the ..... day of September, 1910, together with the penalty of 10 per cent for its vexatious refusal to pay said money, and also for a reasonable attorney's fee, which plaintiff alleges to be $750.00, with interest, and for costs.

Thereafter, on November 25, 1912, the defendant filed its amended answer to said amended petition, which amended answer, as the same was subsequently

amended by interlineations, is in words and figures as follows (omitting caption and signatures):

## AMENDED ANSWER.

Now comes the Hartford Life Insurance Company, defendant in the above-entitled cause, and for its amended answer to the amended petition filed herein:

Admits that it is a corporation and that at all times herein stated it was engaged in the business of life insurance in the State of Missouri.

Admits that at the time the contract or policy of insurance was entered into the defendant's name was the Hartford Life and Annuity Insurance Company, and that since said contract or policy was issued the defendant has changed its name and is named the Hartford Life Insurance Company.

Admits that on the 4th day of September, 1893, the defendant executed and delivered to Frank Barber that certain contract or policy of insurance No. 174416, which is filed with plaintiff's petition, but denies that the consideration for the issue of said policy or contract is as set forth in the plaintiff's petition.

Admits that defendant, by said contract or policy, for the consideration and upon the conditions therein named, agreed to pay, upon the death of Frank Barber, to his wife, plaintiff, if living, the sum of $2,000.00.

Admits that the said Frank Barber died on the 5th day of June, 1910.

Admits that up to the time of his death the said Frank Barber had complied with all the conditions, stipulations and requirements in said policy on his

part to be performed by him, except in the particulars hereinafter affirmatively pleaded.

Admits that the plaintiff was the wife and is now the widow of Frank Barber.

Admits that since the death of Frank Barber the plaintiff has complied with all the requirements in said contract required of her.

Admits that demand has been made on the defendant for the sum of $2,000.00, and that payment thereof has been refused.

Admits that at the time of the issuance of said policy or contract and soon after the execution thereof the said Frank Barber deposited with the defendant the sum of $20.00, but denes that the same was received by the defendant and placed to the credit of Frank Barber, and denies that said sum or any part thereof has ever been retained by or is now retained by defendant, or that said sum, or any part thereof, is in its custody or under its control as a deposit or otherwise.

Denies that upon said deposit of $20.00 any interest has accrued or that the said deposit, or the interest thereon, was in the hands of or under the control of the defendant at the time of the death of Frank Barber for the benefit of Frank Barber or otherwise.

Admits that it has refused to pay the plaintiff the sum of $2,000, but denies that such refusal is vexatious or that it is liable to plaintiff for any sum by way of penalty because of such refusal.

And, having fully answered, defendant prays to go hence with its costs.

Further answering the petition, defendant alleges it is a corporation, organized under the laws of Con-

necticut, and that on the 4th day of September, 1893, the said Frank Barber made a written and signed application to defendant for the policy or certificate sued on herein (a verified copy of which application is hereto attached, marked Exhibit "A"), and that in said application the said Frank Barber agreed as follows:

> "If I, or my representative, shall omit or neglect to make any payment as required in respect of amount, place and time of payment by the conditions of such certificates, then the certificates to be issued hereon shall be null and void, and all money paid thereon shall be forfeited to said company."

Defendant alleges that it received and accepted said application, and, on the faith of the agreement therein contained as above set forth, issued the policy or certificate sued on herein, which expressly refers to and makes said application a part of said certificate or policy, and by the terms of said policy it is expressly provided that it is issued in consideration of "the representations, agreements and warranties made in the application hereof, and of the admission fee paid, and of the sum of $10.00 on each $1,000.00 of the indemnity herein provided for, to be paid to said company, as herein required, to create a Safety Fund as hereinafter described, and of $3.00 per annum on each $1,000.00 for expense dues, to be paid as hereinafter conditioned, and of the further payment of all Mortality Calls proportioned to the indemnity herein provided for, levied against the herein named member to form a Mortuary Fund for the payment of all indemnity matured by deaths of members,

which Mortality Calls, to be levied upon all the members in the department wherein this certificate is issued whose certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity at the dates of such deaths, with due allowance for discontinuance of membership".

Defendant alleges that said certificate further provides:

"2. The member agrees to pay said company for expenses, dues of $3.00 per annum on each $1,000.00 indemnity, on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force, or by *pro rata* installments of the same, in advance, for periods of less than a year. And also agrees to pay said company, within thirty days from day on which notices bear date, all mortality calls determined as within set forth; the proceeds of which, less such charges as are herein prescribed and ten cents on each call for cost of collection, shall form the Mortuary Fund. And further agrees to pay said company during the first year of membership the sum of ten dollars on each $1,000.00 towards the Safety Fund, either in a single payment within sixty days from date hereof, or by equal installments thereof, monthly, during the first year of membership, commencing sixty days from date hereof. In default of which payments towards the Safety Fund said company may for this purpose increase said mortality calls by amounts equal to any such due and unpaid installments; and, while the whole or any portion

of such required payments shall remain unpaid said company may apply toward payment thereof any unapplied sum standing to the credit of this certificate. But if the laws of any country, state, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax, and the proceeds of such mortality calls shall be charged with the member's proportionate share of fees actually paid by the company for medical examinations made in the first year of the membership hereby granted. All of which payments are to be made directly to the home office of said company, and not to agents, who are unauthorized to receive them."

Defendant alleges that in said policy or certificate it is expressly provided that the indemnity agreed to be paid shall be payable out of the Mortuary Fund, so to be created by assessments as above set forth, and not otherwise.

Defendant alleges that said policy further provides:

"3. The member further agrees and accepts this certificate upon the express condition that if either the annual dues, mortality calls, or safety fund deposit, as hereinbefore required, are not paid to said company on the day due, then this certificate shall be null and void, and of no effect, and no person shall be entitled to damages or recovery of any moneys paid for protection while the certificate was in force, either from said company or the trustee of the safety fund. * * *"

Defendant further alleges that said policy provides:

"5. The quarter days for the payment of mor-

tality calls shall be the first day of March, June, September and December in each year, notices of which will be dated and mailed thirty days before such dates. No mortality call to fall due on the first quarter day following the date of this contract can be made. A notice directed to the address of the member, or other person designated by the member, appearing at the time on the company's books, shall be a sufficient notice of any required payment, and a certificate of the secretary, supported by affidavit of the person whose duty it was to perform the service of such addressing and of mailing of notice in post office at Hartford, shall be taken and admitted as conclusive evidence of such addressing and mailing and be admitted as conclusive proof of due notice to each and every person interested herein."

Defendant alleges that Frank Barber elected to pay the dues of $3.00 per annum for each $1,000.00 of indemnity quarterly, in advance, and, from time to time after the issuance of said certificate, he paid his dues quarterly, in advance, and the mortuary assessments which were levied against him quarterly until January, 1910.

Defendant alleges that on the 29th day of January, 1910, it duly made and levied against the said Frank Barber, under said policy, an assessment known and designated as Quarterly Call No. 126; that said assessment, including the taxes thereon, payable to the State of Missouri, amounted to $13.09; that said assessment was made according to the table of graduated mortality ratios given on said policy to form the mortuary fund for the payment of all indemnity matured by death; that said assessment was proportioned

to the maximum indemnity named in said certificate, was levied against all the members holding similar certificates, and was determined by the ages of members and the aggregate indemnity at the dates of such deaths, with due allowance for the discontinuance of membership, and was made and levied in all respects as required by said policy.

Defendant alleges that said notice of said assessment was duly given to the said Frank Barber; that the same was dated the 29th of January, 1910, and was deposited in the post office at Hartford on said date, directed to the address of said Frank Barber as it appeared on the books of the defendant at that time; that at the same time and in the same manner and by the same notice it demanded of Frank Barber the payment of $1.50, the quarterly dues for the quarter ending May 31, 1910; that Frank Barber failed to pay the said dues or said assessment within thirty days from the date on which said notice bore date, that is to say, on or before March 1, 1910; that the defendant extended the time for the payment of said assessment until March 5th, 1910; that afterwards defendant agreed to accept payment of said dues and assessment if paid on or before March 20th, 1910, and so notified said Frank Barber, but defendant alleges that the said Frank Barber failed and neglected to pay said mortality call, and failed to pay said dues either on or before March 1, 1910; March 5, 1910, or March 20, 1910, and payment of the same has never been made, and that, by the terms and provisions of said policy and application, the failure of said Frank Barber to pay said assessment, as well as his failure to pay said dues, terminated said certificate or policy.

Inserted by leave of court on page 6 of amended answer to amended petition:

"That in and by said policy of insurance or certificate of membership it is provided:

"'But if the person addressed as aforesaid shall fail to receive a notice of Mortality Call before the 15th day of February, May, August and November in each year, nevertheless this contract shall not discontinue if an amount equal to the amount of the last paid Mortality Call be transmitted to and received by the company's secretary on or before the fifth day of the calendar month next following the month in which the aforesaid failure of notice shall have occurred. (If failure of notice of first mortality call occurs, then compute for such purpose an amount, for each $1,000 indemnity, equal to twice the ratio set in the table hereon against the member's age.)'"

And also the following allegation:

"Defendant further alleges that under the terms of the policy or certificate of membership sued on herein the assessment or mortality call next succeeding mortality call or assesment No. 126, as aforesaid, became due and payable on the 1st day of June, 1910, but defendant alleges that neither the said Frank Barber, nor anyone on his behalf, paid or tendered to the defendant the amount of mortality call or assessment No. 126, which became due on the 1st day of March, 1910, or an amount equal to twice the ratio set forth in the table attached to said policy or certificate of membership for each $1,000.00 of insurance at the insured's then attained age or any amount on or prior to the 5th day of June, 1910, nor did said Frank Barber or anyone in his behalf pay or

tender to defendant any amount for dues subsequent to the payment of dues for the quarter ending February 1, 1910."

Defendant alleges that although the said Frank Barber lived until the 5th day of June, 1910, or for nearly four months after the forfeiture of the policy, by reason of the non-payment of the assessment and dues in March, 1910, he at no time considered said certificate in force, but at all times acquiesced in the forfeiture thereof resulting from the non-payment of said mortality call or assessment, and abandoned all claims, rights or demands under said certificate or policy.

Defendant further alleges that the contract or certificate sued on is one of many similar certificates issued by the defendant to numerous other members of the Safety Fund Department, Men's Division, of the defendant company; that each of said certificates provides, as does the certificate sued on, for the levy and collection of assessments, the proceeds of which are to constitute the Mortuary Fund referred to in the certificate sued on, from which upon the death of the holder of any such certificate the indemnity provided for herein is to be paid; that the indemnity provided for in each of said certificates is payable only out of said Mortuary Fund and defendant is not otherwise liable for the indemnity provided for by said certificate; that under and by the terms of such certificate defendant is the trustee of said Mortuary Fund; that said certificates create an express trust as to such fund; members holding said certificates so long as they are in force and the members continue alive (and after the death of the members

while the certificates are in force the beneficiaries designated therein) are the *cestuis que trust* of said Mortuary Fund; that said Mortuary Fund has always been maintained in the State of Connecticut; that said fund and the said trust under which it is held is subject to the control and direction of the courts of general jurisdiction of the State of Connecticut, and particularly of the Superior Court of New Haven County and the Supreme Court of Errors of the State of Connecticut; that the manner in which said Mortuary Fund and the trust under which it is held shall be administered has been the subject of adjudication by the courts of general jurisdiction of the State of Connecticut, to wit, by said Superior Court of New Haven County and the Supreme Court of Errors of the State of Connecticut in the case of Chas. A. Dresser *et al.* v. Hartford Life Insurance Company, which said courts have jurisdiction over this defendant and over said fund; that said action was brought by Charles A. Dresser *et al.*, members of the Safety Fund Department and holding certificates of membership similar to that sued on by the plaintiff in this case, which said action was brought by said Charles A. Dresser and other policyholders on their own behalf as well as on behalf of others similarly situated, against this defendant in its capacity as trustee of the Mortuary Fund and against the Security Company as trustee of the Safety Fund, wherein all the rights of the said Frank Barber, as well as all other certificate holders, in and to said funds, and the administration thereof became and were fully adjudicated and said decisions in said case became and are *res judicata* as to the facts found by the courts in said case and the judgments en-

tered in pursuance thereof; and in which case said courts adjudicated and directed how the said Mortuary Fund should be administered; that a copy of the decrees and judgments of said Superior Court of New Haven County are hereto attached, marked respectively "Exhibits B" and "C", and the opinion of the Supreme Court of Errors of the State of Connecticut referred to in said decrees will be found reported in 80 Conn. 681, to which reference is hereby made; that said Mortuary Fund and the trust thereby created is being administered by the defendant strictly in accordance with the terms of said certificate and in accordance with the directions and adjudications of said courts of Connecticut, as shown by said decrees and opinions; that under the terms of said certificates and under the terms of said trust as construed and adjudicated by said courts defendant is without authority to pay out of said Mortuary Fund the amount of any certificate of membership where, as in the case of Frank Barber, the member has failed or refused to pay the assessment levied against him to maintain said fund.

Defendant for further answer denies that the defendant has vexatiously refused to pay the amount sued for; denies that $750.00 is a reasonable attorney's fee; denies that plaintiff is entitled to any damages or attorney's fees because defendant says that the statute of this State (Section 7068) authorizing the imposition of damages and attorney's fees is unconstitutional and void because in violation of Section 10, Article I, of the Constitution of the United States, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in violation of Section 30 of Article II and Sec-

tion 10 of Article II of the Constitution of Missouri, and because the construction thereof by the courts of this State constitutes a rule of judicial construction violative of said provisions of said State and Federal Constitutions, and because said section 7068, if applied to this case, and in its application to the facts of this case, denies the defendant due process of law as guaranteed to it by the said State and Federal Constitutions.

Wherefore, defendant shows to the Court that it is not liable to the plaintiff in this case and prays to be discharged, with its costs.

**EXHIBIT "A" TO ANSWER.**

Applicants and agents will please note particularly the instructions on lower margin of this page and in column 10. Answer every question in writing. Dashes to indicate a negative are not acceptable. Careful compliance with instructions will avoid delay.

9/4/93

(1)

No. 174416 (174417—canceled).
Kind.....
Do not fill above blanks.
Agent, .....
Gen'l Ag't, Mat. Zener.
Send Certificate to #509 Olive St.
At St. Louis.

**Application.**

I, Frank Barber (state name in full of the person upon whose life certificate is applied for), hereby apply for

a Certificate of Membership, limited to two thousand dollars, in the Safety Fund System of the Hartford Life and Annuity Insurance Company, of Hartford, Conn., for the benefit of Rosa Barber (wife), (name and relationship), (if space is too limited, attach a slip), who ha... an insurable interest in my life.

And I agree to make the Safety Fund Deposit according to the Company's requirements.

(Following paragraph appears in red.)

One-quarter of this Deposit is required to be paid on either the first day of March, June, Sept. or Dec. which next follows the date on which first dues become payable. Remainder, by one-third of Mortality Calls until completed. Earlier payment may be made, but delays that vary the above rule will not be permitted. If applicant is for Women's Division, deposit must be paid in proportionate installments as and when the dues are paid, so as to complete Deposit in first year of policy.

Do you desire to pay Safety Fund Deposit in a single payment or by four quarterly payments on the first day of March, June, Sept. and Dec.? No; as above in red.

(1) Your residence: Place, St. Louis; County, ....; State, Missouri; P. O. Address, 900 Chambers St. (Give Street and Number, or P. O. Box). If in a different place from your residence, give name of Post Office.

(2)

(2) Your occupation, profession, or trade (give full particulars.) Such terms as "Merchant", "Mechanic", "Laborer", are not sufficiently explicit. Baker and confectioner. Are spirituous or malt liq-

nors sold by you, either as proprietor or employe? No. Do you work at stone-cutting, grinding or polishing tools or metals; making explosives or poisonous chemicals, or at any employment commonly known as "hazardous"? (give full particulars) No.

(3) Your age, also place and date of your birth. Place of birth (give town, county and state or country), Madison Co., Ill. Year, 1857. Month, Dec. Day, 6. Age at last birthday, 35 (be sure this agrees with year of birth).

(4) Are you married or single? Married.

(5) In what companies, societies or orders is your life now insured, and to what amount in each? $1,000, H. L. & A. Ins. Co.; $2,000, Catholic Knights.

(6) Has any company, society or order declined to grant you a policy or membership? If so, name them, and when? No.

(7) Have you ever been examined for Life Insurance or membership by any physician with an unfavorable result? No.

(8) Have you now or ever had any certificates in force in this Company? If so, state the amount, and number of each. No. 128293, $1,000.

(9) Have you now or have you ever had any of the following affections or diseases (Answer "yes" or "no" opposite each): Spitting of blood, no; liver complaint, no; fever and ague, yes; cancer, or any tumors, no; lumps, swellings or sores, no; yellow fever, no; habitual headache, no; inflammation of lungs, no; chronic cough, no; neuralgia, no; consumption, no; rheumatism, no; palpitation, no; piles, no; scrofula, no; diseases of the heart, no; dyspepsia, no; smallpox, no; pleurisy, no; syphilis, no; paralysis, no; apoplexy, no; sunstroke, no; rupture, no; insanity, no; fistula,

no; asthma, no; dropsy, no; colic, no; fits, no; gout, no; diseases of the urinary organs or of any vital parts, no; attacks of dizziness, no; fainting spells or attacks of unconsciousness, no.

(3)

If you have ever had any of the foregoing diseases, state which, and in each case, how long since. Fever and ague, 19 years ago.

(10) Have you now or have you ever had any other illness, local or constitutional disease, or any serious personal injury? If so, in each case, state what and how long since. No. Have you lost any time by sickness during the last three years (if so, how much)? No. Has any surgical operation been performed upon you (give particulars)? No.

(11) Have you been vaccinated within 7 years? No.

(12) Do you now possess a sound constitution and good health? Yes.

(13) Is your father living? No. Age, .... State of health ..... Is your mother living? No. Age, ..... State of health ..... Is you father dead? Yes. Age at death, 52. Cause of death, accidental. Is your mother dead? Yes. Age at death, 30. Cause of death, childbirth.

(14) How many brothers have you had? None. Ages and condition of health of living brothers ..... How many sisters have you had? None. Ages and condition of health of living sisters .....

(4)

Ages at death and the cause of death of deceased brothers? None. Ages at death and the cause of death of deceased sisters? None.

(15) Are your grandparents living (answer below)? Father's father, no; age, .... Father's mother, no; age, .... Mother's father, no; age, .... Mother's mother, no; age, .... Are your grandparents dead (answer below)? Father's father, yes; age at death, don't know; cause of death? I know nothing of my grandparents. Father's mother, yes; age at death, don't know; cause of death, ....; have heard they all lived to be old. Mother's father, yes; age at death, don't know; cause of death, .... Mother's mother, yes; age at death, don't know; cause of death, ....

(16) Have either of your parents, brothers or sisters ever had insanity, consumption, chronic cough, or any scrofulous, constitutional or hereditary disease? No.

(17) Are your habits of life correct and temperate as to beer, wine, or other spirits? Yes. Have they been so through life? Yes. How many times each day do you drink spiritous liquors? None. How many times each day do you drink malt liquors? Not once a day. Do you use opium, or other narcotics? No.

(5)

(18) For how many attacks of sickness within the last three years have you been attended by a physician, or have consulted one, and for what diseases? None. Give date and duration of each attack, ..... Have you fully recovered therefrom? ..... The following are the names and addresses of every physician consulted in the last three years. Name them .....

(19) Name and residence of your usual Medical Adviser, Dr. George Pitzer, St. Louis, Mo.

(20) Have any facts regarding your past health or present condition been omitted in the foregoing answers? No.

(21) I have verified each of the foregoing answers, adopt them as my own whether written by me or not and declare and warrant that they are full, complete, and literally true answers to the questions against which they are written; and I agree that the exact literal truth of each shall be a condition precedent to any binding contract issued upon the faith of the foregoing answers; I also agree that proof of the fact that the agent taking this application has knowledge of facts contrary to any of the foregoing answers, shall not make valid a certificate of membership issued on the faith of such answers.

Applicant's signature (applicant to sign here as well as below), Frank Barber.

I do hereby agree that the foregoing answers and statements, together with the preceding declaration, warranty and agreements, shall form the basis of the contract between the undersigned and the Hartford Life and Annuity Insurance Company, and are offered to said company by me as a consideration of the contract applied for, and are hereby made a part of all certificates that may be issued on this application; and if there has been any concealment, misrepresentation, or false statement, or statement not true, made herein, and if I or my representatives shall omit or neglect to make any payment as required, in respect of amount, place, and time of payment, by the condition of such certificates, then the certificates to be issued hereon shall be null and void, and all money

pair thereon shall be forfeited to said Company: And it is further agreed that the membership hereby applied for shall be subject only to the conditions and agreements contained in the certificates of such membership to be issued hereon: And it is further agreed that the Company shall not be responsible under said contract after my health shall be impaired by narcotics, alcoholic or other stimulants; and that if I shall die by self-destruction—whether sane or insane—the full measure of the Company's liability under said contracts shall be the amount of the cash payments made thereon, unless positive proof of insanity be furnished the Company.

At St. Louis, Missouri, this 23 day of August, 1893.

I have read the instruction as to payments on lower margin and on page 1.

Applicant's signature, Frank Barber (L. S.)

Witness to both signatures on this column, Dr. Merivaux.

Signatures with "his + mark" must not be witnessed by Agent or Examiner.

Admission fees of $4.00 for $500.00, $8.00 for $1,000, $10.00 for $1,500, $12.00 for $2,000, $13.50 for $2,500, $15.00 for $3,000, $18.00 for $4,000, and at the rate of $4.00 per $1,000 for $5,000 or more (no rebate whatever from these fees being permitted), are authorized to be paid only upon delivery of Certificate to member. All other payments are to be made by member directly to the office of the Company, at Hartford, Conn., and not to any General, Special, State, District or Local Agent, nor to anyone who does not first tender therefor a receipt signed by the

Company's President or Secretary. Register all letters containing currency or postal notes.

(Slip attached to face of Application):

State of Missouri, } ss.
City of St. Louis. }

I hereby certify that I have carefully compared the copy of application attached hereto with the original application for policy No. 174416, and that the within paper is a true and correct copy of said original.

Ottilie Traut.

Sworn to and subscribed before me this 29th day of October, 1912.

My term expires December 28, 1914.

(Seal) Frank A. Mohr,
Notary Public, City of St. Louis, Mo.

## EXHIBIT "B" TO AMENDED ANSWER.

Charles H. Dresser of the Town and County of Hartford and State of Connecticut; Wilbur H. Squire of the Town of Meriden, County of New Haven, State of Connecticut; Hugh J. Wiley of the Town of New Haven, County of New Haven, State of Connecticut; L. F. Perdue of the City of Terre Haute, State of Indiana; E. W. Amsden of the City of Ormond, State of Florida; R. H. Davison of the City of Ballston Spa, State of New York; H. McClary of the Town of Southington, County of Hartford, State of Connecticut; R. N. Stanley of Highland Park, County of Hartford, State of Connecticut; A. J. Bostwick of the Town of Sharon, County of Litchfield and State of Connecticut; Charles Donnelly of the City of Covington, State of Kentucky; Joseph Bradford of the City of Norwich, County of New London, State of Connecticut; Walter H. Adams of the City of Worcester, State of Massachusetts; Henry A. Weber of the City of Detroit, State of Michigan; W. J. M. Gordon of the City of Cincinnati, State of Ohio; W. C. VanLoon of said Cincinnati, State of Ohio; C. A. Roebuck of the Town of Williamstown, State of Massachusetts; O. S. Chapman of the City of Minneapolis, State of Minnesota; J. M. Bugg of the Town of Chipley, State of Georgia; Charles Ammen of the City of New Orleans, State of Louisiana; Adolph Schmidt of the City of Brooklyn, State of New York; A. B. Smith of the Town of Morristown, State of Vermont; William Booth of the Town of Clinton, State of Illinois; W. O. Oldham of the City of Springfield, State of Missouri; C. H. Robinson of the City of St. Paul, State of Minnesota; Peter Farley of the City of Rochester, State of New York; Herbert Myrick of the City of Springfield, State of Massachusetts; A. B. Stockwell of the Town of Windsor Locks, County of Hartford, State of Connecticut; W. L. Dodds of the City of Buffalo, State of New York; O. W. Kerner of the Town of Kernersville, State of North Carolina.

v.

The Hartford Life Insurance Company of the Town of Hartford, State of Connecticut; the Security Company of the Town of Hartford, State of Connecticut; George E. Keeney of Somersville, Tolland County; Lewis Sperry of East Windsor Hill, Hartford County; Rienzi B. Parker of the Town of Hartford, County of Hartford; Lewis E. Gordon of Hartford, County of Hartford; James H. Knight of the Town of Hartford; Raymond G. Keeney of the Town of Hartford, County of Hartford; Andrew Gordon of the Town of Hazardville, County of Hartford, and Everett J. Lake of the Town and County of Hartford; all of the State of Connecticut.

New Haven County Superior Court, March 23, 1910.

## JUDGMENT.

This action brought by the plaintiffs in their own behalf and for the benefit of other creditors and certificate holders in a similar situation as themselves

against The Hartford Life Insurance Company, the Security Company, George E. Keeney, Lewis Sperry, Rienzi B. Parker, Charles H. Bacall, Arthur F. Eggleston, Lewis E. Gordon, James H. Knight, Raymond G. Keeney and Andrew Gordon, by complaint dated October 19, 1906, alleging that, prior to 1880, there had been devised a plan or form of assessment life insurance known as the "Safety Fund" plan, and that under said plan persons insuring therein were to pay in addition to admission fees, medical examination fees and other expense dues, payments of $10 on each $1,000 of insurance to make up a Safety Fund; that said Safety Fund was to be deposited with the Security Company, defendant, as trustee, and as often as said fund reached an amount sufficient to purchase $1,000, par value, of United States bonds, said trustee was to make investments of said fund therein; and that when the purposes and objects of said Safety Fund in the hands of said trustee had been fulfilled in accordance with the terms of the plan as set forth, said Safety Fund was to belong absolutely to the certificate-holders, and that said Hartford Life Insurance Company was to have no interest therein except in its application for the benefit of its certificate-holders in accordance with the terms of the plan; that in the year 1880 the defendant, The Hartford Life Insurance Company, adopted said plan of insurance and announced to the public and to prospective certificate-holders through its officers, managers and agents that it would do business thereunder, and, for the purpose of inducing prospective certificate-holders to take out certificates, published and caused to be published, and issued various circulars and other writings and literature descriptive of said plan of insurance; that the

plaintiffs relied upon the representations and statements contained in said circulars and literature in taking out their certificates; that said company in the year 1899 for fraudulent purposes wrongfully ceased issuing certificates under said plan or form of insurance, and, after said date, and after said Safety Fund had reached the sum of $1,000,000, said Insurance Company asserted the right and intention to levy upon the certificate-holders for mortuary dues and assessments and for expense dues, without limit as to number or amount, and to levy and demand such dues and assessments after the outstanding insurance in said Safety Fund Department should be reduced to below one million dollars, and that said Safety Fund did not belong to the certificate-holders, but belonged to said Insurance Company, and that said Insurance Company continues to make said claim; and alleging fraudulent diversions of moneys by the defendant, The Hartford Life Insurance Company, and the individual defendants from the funds and property of the Assessment Department of said Insurance Company, and illegal, excessive and unnecessary collections, and fees and assessments from the certificate-holders in said department, and mismanagement of the Safety Fund by the defendants by reason of which large losses had resulted to the Safety Fund in the hands of the trustee, as appears fully in said complaint, and claiming for relief, first, that the true amount of said Safety Fund be ascertained and declared and adjudicated to be the property of the Safety Fund certificate-holders, and that The Hartford Life Insurance Company has no property therein, and that it be declared and adjudicated that such is the true meaning of said certificates of insurance, or that said certifi-

cates be reformed so as to convey said meaning; and praying also for a receiver, an accounting, a forfeiture of the moneys and benefits received by the defendant, The Hartford Life Insurance Company, from its certificate-holders, an injunction against The Hartford Life Insurance Company from making its claims in respect to the Safety Fund, damages in the amount of one million dollars, and for such other and further relief as in equity might pertain, came to this Court on the first Tuesday of November, 1906, when all the parties appeared; thence by pleadings as on file to September 16, 1908, when the issues between the plaintiffs and the defendants, The Hartford Life Insurance Company and the individual defendants, were closed by the plaintiffs' reply to the answer of The Hartford Life Insurance Company filed on said date; thence said cause came by continuance and by pleadings as on file to January 21, 1909, when the defendant, The Hartford Life Insurance Company, moved the Court for an order that the issue or issues formed by paragraph 21 of the answer of The Hartford Life Insurance Company to paragraph 29 of the plaintiffs' complaint and paragraph 10 of the plaintiffs' reply thereto be heard and determined before any other issue in said cause was tried; thence to January 28, 1909, when the Court, after fully hearing the parties by counsel, granted said motion and ordered that the issue or issues made by paragraph 21 of the answer of the defendant, The Hartford Life Insurance Company, to paragraph 29 of the plaintiffs' complaint and paragraph 10 of the plaintiffs' reply thereto be heard and determined before any other issue in said cause was tried; thence said cause was continued to May 27, 1909, when all the parties except

the Security Company, defendant, appeared and proceeded to the trial of the last named issue.

The Court having heard the parties with their witnesses on the last-named issue finds the same in favor of the plaintiffs.

Whereupon it is adjudged and decreed that whenever the amount of outstanding insurance in the assessment or Safety Fund Department of The Hartford Life Insurance Company shall be reduced by death, lapse or other causes, to the amount of one million dollars, the Safety Fund in the hands of the trustee is to be distributed among such of the plaintiffs named in the complaint herein as shall have survived said period, and such other certificate-holders in the Men's Division of the said department of said Insurance Company whose certificates are in force at that time, in the proportion that the face value of their respective certificates bears to the total amount of the outstanding insurance in said division of said Safety Fund Department; provided, however, that none of the contingencies or situations provided for in said contract Exhibit "B" for the distribution of said Safety Fund shall have arisen before that time, but such provisions in said Exhibit "B" shall remain in full force and effect unimpaired by this decree. And as the time when, in the ordinary course of events, the amount of outstanding certificates will be reduced to one million dollars is so remote, and that it will ever occur is so uncertain, no other relief under the general prayer should be granted at this time on this issue.

Shumway, J.

## EXHIBIT "C" TO AMENDED ANSWER.

Charles H. Dresser of Hartford, Connecticut;
Wilbur H. Squire of Meriden, Connecticut;
Hugh J. Wiley of New Haven, Connecticut;
F. L. Perdue of Terre Haute, Indiana;
E. W. Amsden of Ormond, Florida;
R. H. Davidson of Ballston Spa, New York;
H. McClary of Southington, Connecticut;
R. N. Stanley of Highland Park, Connecticut;
A. J. Bostwick of Sharon, Connecticut;
Charles Donnelly of Covington, Kentucky;
Joseph Bradford of Norwich, Connecticut;
William H. Adams of Worcester, Massachusetts;
Henry A. Weber of Detroit, Michigan;
W. J. M. Gordon of Cincinnati, Ohio;
W. C. VanLoon of Cincinnati, Ohio;
C. A. Roebuck of Williamstown, Massachusetts;
O. S. Chapman of Minneapolis, Minn.;
J. M. Bugg of Chipley, Georgia;
Charles Ammen of New Orleans, Louisiana;
Adolph Schmidt of Brooklyn, New York;
A. B. Smith of Morristown, Vermont;
William Booth of Clinton, Illinois;
W. A. Oldham of Springfield, Missouri;
C. H. Ribinson of St. Paul, Minnesota;
Porter Farley of Rochester, New York;
Herbert Myrick of Springfield, Massachusetts;
A. B. Stockwell of Windsor Locks, Connecticut;
W. L. Dodds of Buffalo, New York;
O. W. Kerner of Kernersville, North Caroilna;

*v.*

The Hartford Life Insurance Company of Hartford, Connecticut;
Security Company of Hartford, Connecticut;
George E. Keeney of Somersville, Connecticut;
Lewis Sperry of East Windsor Hill, Connecticut;
Rienzi B. Parker of Hartford, Connecticut;
Lewis E. Gordon of Hartford, Connecticut;
Everett J. Lake of Hartford, Connecticut;
James H. Knight of Hartford, Connecticut;
Raymond G. Keeney of Hartford, Connecticut; and
Andrew Gordon of Hazardville, Connecticut.

New Haven County Superior Court, March 23, 1910.

### Judgment.

This action was brought by the plaintiffs in their own behalf and for the benefit of other creditors and certificate holders in similar situation as themselves against the defendants named in the complaint, claim-

ing that prior to 1880 there had been invented a plan of assessment life insurance which was designated as the Safety Fund Plan, and published and generally known under that name, the principal features of which plan are described as follows: Each person applying for insurance under the plan was to pay an admission fee of $8 for $1,000; $12 for $2,000; $15 for $3,000; $18 for $4,000; $20 for $5,000, and $40 for $10,000, and a medical examination fee estimated at $3, which medical examination fee was to be paid to the physician; also to pay annually, for the sole purpose of paying the expenses of said insurance on said Safety Fund Plan, $3 for each $1,000 of insurance, also to pay as mortuary payments or assessments to meet death losses an amount graduated according to the policy-holder's age, when the assessment was made, the amount of his policy, and the total amount of insurance or indemnity in force with the company. Furthermore, each member was to pay $10 on each $1,000 of his insurance to make up a "Safety Fund". This Safety Fund was to be deposited with the defendant, The Security Company of Hartford, Connecticut, as trustee. As often as the receipts for said fund amounted to a sufficient sum to purchase $1,000 par value of United States bonds, such trustee was to make investments of such funds therein and register the same in its name as trustee of the Safety Fund of said insurance company. The earnings of this Saftey Fund, after it reached $300,000, and all contributions to said fund after it reached $1,000,000 in United States bonds, par value, were to be divided up among the outstanding certificate holders whose certificates had been in force five years, in proportion to the face

amount of their certificates. In case of failure of any certificate holder to make payments in accordance with his agreement, his interest in said Safety Fund and all his claims were to cease; and when the face amount of outstanding certificates was less than $1,000,000 it should be divided among the outstanding certificate holders in proportion to the face amount of their certificates. And further, said sum was to belong absolutely to the certificate holders and the company was to have no interest whatsoever therein, except in its application for the benefit of the certificate holders in accordance with the terms of said plan. And claimed that at some time in the year 1880 the defendant, the Hartford Life Insurance Company, adopted said plan and issued certificates in accordance with the terms thereof; and that the plaintiffs and a large number of others held certificates issued in accordance therewith and similar to Exhibit "B" annexed to said complaint; and claimed that in pursuance of certain purposes for its own benefit said insurance company offered various inducements to induce the certificate-holders in its Safety Fund department to surrender their certificates in said department and to take out in place thereof policies in the stock department of said company, and that said insurance company had diverted from the moneys and property of said Safety Fund department large sums of money to use and benefit of itself and the managers and stockholders of its stock department, and made other allegations, as will appear from said complaint, and asked relief as therein set forth. Said action came to this Court on the first Tuesday of November, A. D. 1906, and thence by continuance to the first Tuesday of Jan-

uary, 1907, when and where the parties appeared and were at issue on demurrers as on file, and the Court on the 11th day of October, 1907, sustained said demurrers and adjudged that the complaint was insufficient, and that the defendants recover the costs, and thereupon the plaintiffs appealed from said judgment to the Supreme Court of Errors to be held at Bridgeport within and for the Third Judicial District on the first Tuesday of October, A. D. 1907, and said Court having heard said case, rendered judgment on June 9, 1908, finding error and overruling said demurrers in part and sustaining said demurrers in part, and remanding said cause to this Court for further proceedings as will appear in said judgment; and thereupon the defendant, the Security Company, filed its answer as on file, and the other defendants filed their answers as on file, and the case was heard on the demurrer of the plaintiffs to the answer of the Security Company, and the Court on the 17th day of December, 1908, rendered its decision sustaining the demurrers to the first, second and third defenses of said answer, and overruling the demurrer to the fourth defense; and the case thereupon came by regular continuances to this Court on the ..... day of January, 1909, when the Court made an order that the issues raised by the 21st paragraph of the answer of the Insurance Company to the 29th paragraph of the complaint, and paragraph 10 of the plaintiffs' reply to said answer, be heard and determined before any other issues were tried, and thence said case came by regular continuance to the 27th day of May, A. D. 1909, when the parties were at issue as on file, and thereupon a hearing was had on said issues, but the said The Security Company did not appear,

and the Court (Judge Shumway presiding) after said hearing filed a memorandum of decision as on file under date of July 21, 1909, and on March 23, 1910, formally entered judgment as on file to conform to the date of this judgment; and thence said cause came to this Court on the 10th day of November, A. D. 1909, when all the parties duly appeared and were heard on the other issues in said case not disposed of by the aforesaid judgment, and the Court having heard the parties, finds certain issues in favor of the plaintiffs and certain others in favor of the respective defendants, as herein set forth, and at the request of the plaintiffs specially sets forth the facts upon which the judgment is founded as follows:

The Safety Fund plan of insurance under which the certificates in this case were issued, and with which they comply in terms, is substantially as follows: Each person applying for insurance under the plan was to pay an admission fee of $8 for $1,000; $12 for $2,000; $15 for $3,000; $18 for $4,000; $20 for $5,000, and $40 for $10,000, and a medical examination fee estimated at $3, which medical examination fee was to be paid to the physician; also to pay annually expense dues of three dollars for each $1,000 of insurance, also to pay as mortuary payments or assessments to meet death losses an amount graduated according to the policy-holder's age, when the assessment was made, the amount of his policy, and the total amount of insurance or indemnity in force with the company. Furthermore, each member was to pay $10 on each $1,000 of his insurance to make up a Safety Fund. This Safety Fund was to be collected by the defendant, The Hartford Life Insurance Company, and by it deposited with the de-

fendant, The Security Company of Hartford, Connecticut, as trustee. As often as the receipts for said fund amounted to a sufficient sum to purchase $1,000 par value of United States bonds, such trustee was to make investments of such funds therein and register the same in its name as trustee of the Safety Fund of said Insurance Company until said fund so invested would amount to one million dollars par value of United States bonds. The earnings of this Safety Fund after it reached $300,000 and all contributions to said fund after it reached $1,000,000 in United States bonds, par value, were to be paid over by said Security Company to said Insurance Company and by it be divided up among the outstanding certificate-holders who had contributed five years prior to the date of any such division their stipulated proportion or payments to said fund, in proportion to the face value of their certificates.

In case of failure of any certificate-holders to make payment in accordance with his agreement, his interest in said Safety Fund and all his claims thereon ceased. When the face amount of outstanding certificates becomes reduced by death, lapse or other cause to the amount of one million dollars, the disposition of said Safety Fund in such case was adjudicated by this Court in the judgment referred to above rendered by this Court, Judge Shumway presiding, as appears therein.

The Security Company and the Hartford Life Insurance Company on December 31, 1879, and before the Hartford Life Insurance Company commenced the issue of such certificates, executed an agreement, a copy of which is incorporated in each certificate and is found incorporated in Exhibit "B" in this case,

under which agreement the Security Company assumed the management of the Safety Fund in accordance with the terms of the contract contained in the certificate, and with the plan as thus set forth, and continued the management of such business in accordance with the terms of the agreement down to a period in 1890.

At the solicitation and by the procurement of the Hartford Life Insurance Company the Legislature of 1889 passed a private act, approved April 10, 1889, which is as follows:

> "Resolved by this Assembly: That the Security Company, a corporation located in Hartford, be, and it is hereby, authorized to invest the funds known as the Safety Fund, which it now holds or may hereafter receive from the Hartford Life and Annuity Insurance Company, a corporation also located in said Hartford, under a contract between said companies dated the thirty-first day of December, 1879, in trust for the benefit and security of certain holders of certificates of membership in said Hartford Life and Annuity Insurance Company, in such other securities, in addition to United States bonds, as the life insurance companies of this State are by law authorized to invest in, instead of being compelled to invest all said funds in United States bonds as specified in said contract; provided, such investments of said funds in other securities than United States bonds, shall be made with the consent and approval of said Hartford Life and Annuity Insurance Company; and, provided further, that nothing in this resolution shall be so construed as in any way to vary, alter or change the purposes, conditions or stipulations of such trust as set forth in said contract, except as to the

kind of securities in which the same may be invested."

Thereafter the Security Company did not comply with the provisions of the contract executed in December, 1879, in regard to investments. It never accumulated a fund of one million dollars, par value, of United States bonds, although it did accumulate a fund which in June, 1894, amounted to one million dollars value of securities. Relying in good faith on the provisions of the Act of 1889 above quoted, in the year 1890 it sold United States bonds amounting to $501,000 par value then held by it under the terms of said trust agreement and received therefor $97,366.85 over and above the par thereof, which United States Bonds had been purchased at a premium of $115,689.50, making the whole cost of the said bonds $616,689.50. Said Security Company thereupon, in accordance with the provisions of said Act of 1889, but in violation of said contract with said certificate-holders made in 1879, as aforesaid, invested the proceeds of such sale, together with other Safety Fund payments thereafter received, in such other securities as are required for the investment of insurance companies under the laws of this State, but not in United States bonds as provided in said agreement. The amount of money so received and invested, together with the premiums paid, including the premiums paid on the United States bonds so converted, amounted to much more than one million dollars, to wit, upwards of $1,000,000.

Said Act of 1889 above stated has been ruled by this Court on demurrer to the answer of the defendant, the Security Company, to be unconstitutional as

impairing the obligation of the contract embodied in the trust agreement with the certificate-holders.

As a result of such investments in other securities losses have been incurred, and the actual value of said fund now remaining in the hands of the Security Company on account of said Safety Fund is somewhat less than one million dollars. Many of said securities are not such as are authorized by the law of this State concerning the investments by trustees, as appears by the disclosure of the Security Company on file in this case, and some of these securities have today no market value and are paying no income.

This Court, however, finds that the illegal investments made by the Security Company under the provisions of the private Act of the General Assembly of 1889 were not made to further any purpose of its own, but were made in reliance upon said act which was passed in the supposed interest of the beneficiaries, or certificate-holders; that such illegality differs from illegality knowingly or negligently indulged in; that the loss which has fallen upon the Security Company from such illegal investments of the Safety Fund has its source in misfortune and not in culpability.

By reason of the change so made in the investments of said Safety Fund, there was received as income by said Security Company down to the commencement of this action, $315,828.41 in excess of what the income would have been had said United States bonds not been sold and all investments of said Safety Fund had been made by the trustee only in United States bonds.

Practically the only issue of United States bonds in the market for sale from January, 1890, to March, 1895, were the four per cent bonds maturing April 1,

1907. The market price of said bonds in January, 1890, was 126½ of par, and the price thereof gradually fell from time to time until March, 1895, when a new issue was made of four per cent bonds to mature in 1925. The market price of said four per cent bonds of 1907 then ranged from 111 to 112¾ of par, and the market price of said four per cent bonds of 1925 ranged from 119⅛ to 120½. The Security Company was not required to establish a sinking fund. The agreement makes no reference to such a fund, although United States bonds were then (December, 1879) at a small premium of about three per cent.

The situation presented by the beneficiaries was not analogous to that of a life tenant and remainderman, but was more nearly like a beneficiary entitled to the interest, and eventually to the principal of a fund. It was as important for the early certificate-holders to receive all the income as that a sinking fund should be established to lighten the possible burden that might fall on certificate-holders at the maturity of the bonds, if the $10 payments then received were applied to the purchase of bonds to restore the Safety Fund to $1,000,000, par value, of United States bonds. A continuation of the business was then contemplated with a constant flow of $10 payments into the Security Company from new certificate-holders. By having no sinking fund, the total net income went to the beneficiaries instead of a part of it into an investment to await the maturity of the bonds, thus in effect the beneficiaries became the holders of a sinking fund, since if at maturity more than the $1,000,000 was necessary to procure $1,000,000 par value of United States bonds it would come from them in diminished returns from the $10 payments, or in case (as hap-

pened) the business was not continued, then equitably from diminished payments of income until the fund was restored. As a matter of fact, at the maturity of the bonds of 1907, United States bonds paying two per cent could have been purchased nearly at par.

Under the investment policy pursued after 1889, a much larger sum arising from unused $10 payments was returned, and much earlier, to the use of certificate-holders, and also a much larger amount of income was so returned, than would have been returned if the investments had been made in United States bonds.

By the terms of said trust agreement above referred to, it appears that the Security Company agreed with the Hartford Life Insurance Company and with the certificate-holders, that "the necessary expenses connected with the management of said fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinafter mentioned bonds, together with the cost of the stationery and postage used in replying to requests for information of the condition of said fund, and the actual cost of any judicial action needed to determine the legal status of said fund. All other expenses to be included in and covered by such reasonable charges as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof."

On the date of the execution of said trust agreement, the Security Company by its president and secretary wrote a letter to the president of the Insurance Company, and the same day the Insurance Company by its president and secretary wrote a similar letter

to the president of the Security Company, in both of which it was stated that it was agreed that the compensation referred to in said contract should be as follows: "The rate to be one per cent on all sums up to and not exceeding $200,000, but in no year to be less than $500.00; and from $200,000 to $400,000 to remain at $2,000 per annum; and on all amounts exceeding $400,000 to be one-half of one per cent per annum."

This was done before any certificate of membership had been issued by the Insurance Company and before any opportunity had been had to determine the amount of time and labor involved in the execution of the trusteeship.

Thereafter, at the end of each six months, the Security Company computed its compensation under its interpretation of said agreement with the said Insurance Company, and submitted said compensation to said Insurance Company for its approval, and, if so approved, it withdrew said amount and took the same as its compensation as trustee for the preceding six months.

No complaint was ever made of this compensation by any certificate-holder down to the commencement of this suit, but it did not appear that the certificate-holders knew of the rate or amount of compensation which said trustee had received or was receiving.

The amount of income collected under said trust agreement by the Security Company was $970,175.83 down to September 18, 1908, and the Security Company, acting under its interpretation of the terms of said letter, received and credited to itself as compensation, with the consent of said Insurance Company, and deducted from said income, the amount of

$116,741.16, being more than twelve per cent of the income, and then paid over to the Insurance Company for credit on the assessments of the certificate-holders in accordance with the terms of the contract, the balance of the income after deducting its compensation and other expenses, the latter amounting in all to over fifteen thousand dollars.

Since 1892 the stated compensation of the trustee has been calculated and received on amounts which in each year exceeded one million dollars.

The ordinary compensation of a trustee for holding and managing trusts consisting of personal property is five per cent of the income. Under the contract, the Security Company, down to March, 1899, in addition to taking care of and managing said Safety Fund, and turning over the income to the Hartford Life Insurance Company semi-annually, in pursuance of the contract, kept an account of the ten dollar payments with the names and addresses of the certificate-holders from whom said ten dollar payments were received. Since January 1, 1891, the fair value of the services of the trustee does not exceed eight per cent of the gross income of the fund for each year, but its charges for such services have largely exceeded that amount. The amount of such excess, together with simple interest thereon calculated from the close of each year, when such charge was made, amounts to $40,046.36.

And this Court further finds that said Security Company was not obligated under the terms of said trust agreement with the Hartford Life Insurance Company and with the certificate-holders, to maintain a sinking fund;

That the act of the General Assembly of 1889, to

which reference is made above, was passed without notice to, or the consent of, the holders of certificates of insurance issued by said Insurance Company, and was unconstitutional and void; that if the Safety Fund is now invested in United States bonds an annual income of less than two per cent will be received on the amount so invested, and that if said fund is now invested in securities (other than United States bonds) in which the law of this State authorizes trustees to invest trust funds, an approximate annual income of four per cent will be received on the amount invested, and that it is within the power of this Court of Equity to protect the said certificate-holders from the great and unnecessary loss and waste of approximately twenty thousand dollars per year, which loss and waste will result if said Safety Fund is now invested in United States bonds.

It was claimed by the plaintiffs that the defendants were levying assessments unnecessary in amount and number for their own wrongful purposes. The Hartford Life Insurance Company levied the assessments provided for in the plan and in the certificate above set forth, quarterly, and the proceeds of such assessments when received by said Insurance Company were paid into and credited to the mortuary fund described in the contract of insurance. The Hartford Life Insurance Company did not levy assessments unnecessary in amount or number. It appeared, however, that the allowance made for discontinuance of membership, although made in good faith, often exceeded the actual amount necessary to cover the deficiency in payments arising from such discontinuances, and from that source margins of excess of

payment arose from time to time consisting of the difference between the aggregate amount actually received by said Insurance Company from such quarterly assessment and the amount needed to pay the losses for the corresponding quarterly period. It also appeared that although the Company in practice levied assessments to cover the full amount of the face value of the certificates for each death during the previous quarter, they deducted an actual payment from the face of such certificates a certain proportion of the assessment which would have been due from the certificate holder had he survived the quarter, which sum is proportioned to the portion of such quarter which had elapsed at the time of the death of such certificate holder, and there was, therefore, a margin arising from this circumstance between the amount of the lossses paid and the amount of the lossses assessed for. These margins accumulated from time to time in the hands of the Hartford Life Insurance Company in its mortuary fund, have always been and are now in constant use in the prompt payment of losses in advance of the receipt of the moneys to pay the same from the regular assessments, by which receipts the said fund is constantly reimbursed. Said accumulation of margins, although in constant use, are capable of exact determination in amount, and now amount to many thousands of dollars.

The plaintiffs claimed it was improper and wrongful to accumulate these margins and to carry this balance in said mortuary fund, and claimed that said balance of margins should be distributed among the outstanding certificate holders, but it is held that it is proper and reasonable that the Company should

hold some such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the Company should hold more than the amount of one average quarterly assessment for the previous year.

Said fund belongs to the certificate holders, and is held in trust for them, and the Hartford Life Insurance Company has the right to hold the same, to the extent above stated, in trust for said certificate holders and for application to the settlement of death claims, and said fund should be ultimately distributed in the settlement of death claims and as hereinafter provided, before said certificates in accordance with their provisions are extinguished and the Safety Fund distributed in accord with the judgment of this Court, Judge Shumway presiding, above referred to.

It is provided in the certificates that they are payable solely from the mortuary fund. It is also provided by the certificates and by the trust agreement hereinbefore referred to, that on the distribution of the Safety Fund among the certificate holders, all liability on the certificates shall thereupon cease and determine.

It was claimed by the plaintiffs that the expense dues received by the Hartford Life Insurance Company could be levied only for the purpose of paying the expenses of the Safety Fund Department of the Hartford Life Insurance Company, and that as the Company ceased to issue new certificates and transact new business at a period later than 1899, the Hartford Life Insurance Company was not entitled to said expense dues after that period, and that the plaintiffs were entitled to an account for the amount of such expense dues received after the payment of the expenses actually incurred by the Hartford Life In-

surance Company in connection with the business. It has been ruled by the Supreme Court of this state, and is so held by this Court, that said three-dollar expense dues did not become a part of the funds of the Safety Fund Department, but that they belong to the Insurance Company without accountability to the certificate holders, and that said Company is entitled to collect the same so long as there is any outstanding certificate of insurance. The plaintiffs made no claim at the time of the trial for any such account of said expense dues, and made no claim for relief on account of the collection or receipt of the same, and the plaintiffs are not entitled to any such relief.

It was also claimed that the Insurance Company had from time to time diverted moneys and property of the Safety Fund Department from such Safety Fund Department to the Stock Department without right.

The plaintiffs, after submitting evidence on the trial in support of said claim, withdrew their demand therefor and admitted that the circumstances appearing to indicate such diversion arose from the difference in the method of keeping accounts appearing by their reports to the Insurance Department, and it is found that the Insurance Company has not wrongfully diverted such sums from the Safety Fund Department to the uses of the Stock Department.

It was claimed by the plaintiffs that the defendants other than the corporations, as officers and agents of said Insurance Company, took their offices with knowledge of the various wrongful and fraudulent acts recited in the complaint, and had accepted the benefits of said fraudulent transactions. But it is held that said defendants, namely, George E. Keeney,

Lewis Sperry, Rienzi B. Parker, Louis E. Gordon, Everett J. Lake, James H. Knight, Raymond G. Keeney, Andrew Gordon, Arthur F. Eggleston and Charles H. Bacall, became connected with said defendant Insurance Company and took their positions in said Company at a date subsequent to the acts complained of and recited in said complaint, and have not participated in and are not guilty of any fraudulent acts or transactions in connection with the management of the Safety Fund Department of said Insurance Company.

Plaintiffs are not entitled to an account, a receiver, damages or other relief except as herein granted.

Defendants Charles H. Bacall and Arthur F. Eggleston died after the commencement of this action and before any judgment was rendered therein.

Whereupon it is adjudged and decreed that said Mortuary Fund of the Men's Division arising from the excess of the amount received for quarterly assessments over the amount necessary for the payment of losses for said quarter, as above described, or from any other source, together with all income or interest thereon, belongs to the certificate-holders in the Men's Division of the Safety Fund Department, and the Insurance Company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in said department.

Further, that in the future, any excess in said fund above the average of the four preceding quarterly assessments in said Men's Division of the Safety Fund Department of said Company shall be distributed to the certificate-holders in diminution of as-

sessments by crediting and applying such excess on account of the next succeeding assessment.

Also, that when the amount of outstanding certificates of insurance in the Men's Division of the Safety Fund Department falls to the face amount of one million dollars and the Safety Fund is distributed among the holders of said certificates, the balance, if any, of said Mortuary Fund remaining in the hands of the Hartford Life Insurance Company shall be distributed *pro rata* among the certificate-holders whose certificates are outstanding at that time.

That said Security Company as such trustee within eighteen months from and after July 1, 1910, shall sell and dispose of all present securities and investments of said Safety Fund, other than those which it shall be willing to hold as securities authorized by law, for trust investments, and shall invest the proceeds of such sales in such securities (other than United States bonds) in which trustees are allowed to invest under the law of the State of Connecticut.

That said Security Company, as such trustee, may and shall continue to hold as a part of said Safety Fund, any and all securities (other than United States bonds) in which said fund is now invested, and which constitute investments in which trustees are authorized by law to invest, and which said trustee shall decide to retain as a part of said Safety Fund.

That all of said trust securities which shall be retained by said Security Company in said Safety Fund shall be valued and so held at their market value at the date of this judgment, and that all securities hereafter pruchased by said trustee as a part of the investments of said Safety Fund shall be taken and

held as a part of said Safety Fund at their cost price.

That as to all bonds or obligations payable at a fixed time in the future which shall be so retained or hereafter purchased by said trustee as a part of said Safety Fund, the Security Company shall create and carry a sinking fund out of the income of said respective securities for the amortization of the premiums or bonuses above par, which there may be in the valuation or cost of said securities.

In case the present market value of all the securities which are now held by said trustee and which it shall retain as a part of said Safety Fund, together with the cost price of all securities purchased by said trustee under the provisions of this judgment, shall not equal the sum of one million dollars on or before January 1, 1912, then said Security Company, out of its own funds, shall furnish and pay into the principal account of said Safety Fund a sum sufficient to make said fund up to one million of dollars, which sum so paid in (if any) shall be invested by said trustee in securities in which trustees shall then be authorized by the law of this State to invest.

That said trustee shall have the right and power to sell and transfer from time to time any securities which it may hold in said fund, and shall invest the proceeds of said sales in other securities in which said trustees shall be authorized to invest.

That the Security Company credit to the income account of the Men's Division of the Safety Fund Department, the sum of forty thousand and forty-six dollars and thirty-six cents ($40,046.36), being the excess of the amount hitherto received by it over the compensation which this Court has allowed, with interest thereon as above described.

That the Security Company hold said sum of forty thousand, forty-six and 36/100 dollars ($40,046.36) as a separate fund until the conversion of the securities as provided above, and if under this judgment the Security Company is compelled to make up from its own funds any of the principal of the Safety Fund, then the Security Company is authorized and directed to apply such sum of $40,046.36, with the accumulated interest realized thereon from the date thereof, in whole or in part to reimburse said Security Company, so far as may be, for the sum so made up by it. If after the conversion of the securities and the re-establishment of the Safety Fund as provided above, the whole or any portion of said $40,046.36 remains unapplied for the purpose of so reimbursing said Security Company, the Security Company is directed to retransfer it to the regular income account of the Safety Fund.

That when the conversion and purchase of securities is completed as hereinbefore authorized, the Security Company shall file in this Court a report or account of its proceedings in detail, sworn to by one of its executive officers, and which shall show an investment of one million dollars as the principal of said Safety Fund, and the payment of any excess under this judgment, to the income account of said Safety Fund.

That the said Security Company from this time henceforth shall be entitled to charge and receive for its services as such trustee a sum equal to eight per cent of the gross income received from said investments, to be paid in semiannual payments of four per cent each.

In addition to said eight per cent of the gross in-

come as compensation, and in addition to such expenses as are authorized by said trust agreement of December 31, 1879, said trustee shall be entitled to be reimbursed for all necessary legal expenses incurred in the protection and collection of any obligation which shall at any time be held under the authority of this judgment as a part of the principal of said Safety Fund.

It is further adjudged that this litigation is of such a character and the results of such value to all the present certificate-holders who as a class are interested in this litigation that an allowance should be made from the accounts of the Safety Fund in aid of the plaintiffs in the payment of the expenses, including the attorney's fees, involved in the conduct of this litigation.

Whereupon it is further adjudged that said Security Company pay to Henry Stoddard, Talcott H. Russell and John K. Beach, attorneys for the plaintiffs, on or before the expiration of ten days after the judgment in this case shall become final, the sum of twenty-five thousand dollars ($25,000), which sum shall be paid out of the principal of said Safety Fund now in its hands, which shall be applied by the plaintiffs and their said counsel to aid in the settlement of the expenses and attorneys' fees of the plaintiffs in this action, for which the said plaintiffs shall give to said Security Company a receipt certifying to said payment in accordance with this judgment, which certificate shall be carried by said trustee as a part of said principal of the Safety Fund, for reimbursement as hereinafter provided, and said payment shall not constitute a deficiency *pro tempo* in the principal of said fund.

It is also adjudged that said trustee shall semi-annually pay out of and from the income received from the investments of the principal of said fund, the sum of one thousand dollars, and shall pay the same into the principal fund, and shall endorse said payment upon said certificate originally given under this judgment for the payment of said sum of twenty-five thousand dollars ($25,000), which payment, when so endorsed, shall constitute a repayment *pro tanto* of said sum, and said trustee shall continue to make said semi-annual repayments until said sum of twenty-five thousand dollars ($25,000) has been so repaid, and said Security Company shall be under no other obligation or liability to repay said sum of twenty-five thousand dollars ($25,000) or any part thereof.

It is also adjudged that said Security Company shall conform to all of the agreements contained in said trust contract of December 31, 1879, other than the one with reference to the investments of said trust funds, as to which this judgment shall control; and that the defendant, the Hartford Life Insurance Company, keep said Security Company correctly informed of the names and addresses of the certificate-holders in the Men's Division of the Safety Fund Department, and of the number and amount of such certificates in accordance with the terms of the Safety Fund contract, and furnish said Security Company such other information as may be required in accordance with the terms of said contract.

It is also adjudged that no costs shall be taxed by or in favor of any party hereto.

Curtis, J.

And thereafter, on June 3, 1918, the defendant filed a motion to strike said cause from the docket, which motion is in the words and figures as follows (omitting caption and signatures):

## MOTION TO STRIKE FROM DOCKET.

Now comes the Hartford Life Insurance Company, defendant in the above-entitled cause, and moves the Court to strike this cause from the docket, for the reason that on defendant's appeal of this cause to the Supreme Court of the State of Missouri the judgment entered by this Court in favor of the plaintiff was reversed outright by the Supreme Court of Missouri and this Court is therefore without jurisdiction to order, grant or entertain another trial of this cause and there is no warrant in law for again docketing this cause for trial.

And thereafter, on November 20, 1918, plaintiff filed her reply to said amended answer as amended, which reply is in words and figures as follows (omitting caption and signatures):

## REPLY TO AMENDED ANSWER.

Comes now the plaintiff in the above-entitled cause and for reply to the defendant's amended answer, as amended, and denies each and every allegation in said answer contained and set forth.

Wherefore, having fully replied, plaintiff prays judgment as in her petition prayed.

For further reply to the defendant's said amended answer, as amended, plaintiff states that the said defendant, by attempting to assess against said Frank Barber, by insisting upon and asserting and pleading as a ground of forfeiture of the policy sued upon herein, and as a defense to this action, the failure to

pay mortality call or assessment succeeding the alleged mortality call or assessment No. 126, for the alleged failure to pay which the defendant claims a forfeiture of the policy of insurance herein and which it is alleged succeeded said mortality call or assessment No. 126, and became due and payable on the first day of June, 1910, the defendant has waived any alleged forfeiture of said policy for the alleged failure to pay by Frank Barber the alleged mortality call or assessment No. 126, which it is alleged by defendant was due on the first day of March, 1910, and that the defendant is now estopped to assert the same or to claim that the policy of insurance sued upon herein was forfeited on account thereof.

And for further reply to the defendant's amended answer herein, as amended, plaintiff states that the defendant, on the 8th day of July, 1910, stated to the plaintiff and then contended that the policy of insurance sued upon herein lapsed and was forfeited for the failure of Frank Barber to pay an alleged assessment, known and designated as call No. 126, due March 1st, 1910, and was then canceled by the defendant for that reason and for no other reason; and that the defendant did not then and there contend or assert that said policy of insurance lapsed and was canceled by the defendant for any other reason or for the failure of said Frank Barber to pay an alleged succeeding assessment due on June 1, 1910, or for the failure of said Frank Barber to pay $1.50 quarterly dues, or any amount for taxes, and that thereby the defendant led plaintiff to believe that for that reason and no other reason the defendant refused to pay plaintiff the amount of the policy sued upon herein; that at no time before the institution of this suit did the defendant contend or claim that the policy of insurance herein had lapsed and was for-

feited for the non-payment of the alleged mortality call or assessment due June 1st, 1910, or the payment of the sum of $1.50 or any other sum for quarterly dues, or any sum for taxes, and that the defendant has now waived the same and is estopped to make the defense or assert that the policy of insurance sued upon herein, was lapsed or forfeited for the alleged failure of Frank Barber to pay the alleged mortality call or assessment alleged to be due June 1, 1910, or to pay the sum of $1.50 or any other sum as quarterly dues or any sum as taxes, and cannot now claim that said policy was rendered void or was forfeited by reason of the same.

For further reply to the defendant's said amended answer, as amended, plaintiff states that the defendant herein has wrongfully collected from the said Frank Barber the sum of 2 per cent upon each and every assessment on said policy from the date thereof, to the time of his death, amounting to more than the amount of the alleged mortality call or assessments, for the alleged failure to pay which the defendant now claims the policy of insurance herein sued upon was forfeited, and that by reason thereof was indebted to the said Frank Barber for more than the amount of said alleged assessments, and that by reason thereof the defendant cannot claim or assert that said policy was forfeited for the alleged failure of the said Frank Barber to pay the same.

Plaintiff further states that the defendant habitually and for a long time before the death of said Barber received and accepted from said Barber assessments and dues on the policy sued upon long after they became due and payable and did not insist upon and require during his lifetime the prompt payment of the same, and waived the prompt payment of dues and assessments when due and has waived the

right to claim a forfeiture of the policy for failure to pay the assessments and dues in question, and is estopped to assert or claim a forfeiture of the policy by reason of the failure to pay the assessments and dues in question.

Wherefore, having fully replied, plaintiff prays judgment as in her petition prayed.

Robert Kelly,
Nick M. Bradley,
M. D. Aber,
Chas. E. Morrow,
Attorneys for Plaintiff.

And on the last-mentioned date, to wit, November 20, 1918, defendant filed its motion to strike out parts of the reply filed by the plaintiff, which motion is in words and figures as follows (omitting caption and signatures):

**MOTION TO STRIKE OUT PARTS OF REPLY.**

Now comes the defendant and respectfully moves the Court to strike from the reply filed by the plaintiff on November 20, 1918, the following:

All of paragraph third on page one of said reply for the reason that it does not allege facts sufficient to constitute a reply.

Also the last paragraph on page one, commencing with the words "for further reply", and ending with said paragraph on page two of said reply, ending with the words "was forfeited by reason of the same", for the reason that it does not allege facts sufficient to constitute a reply.

Also the last paragraph on page two of said reply, beginning with the words "for further reply to the defendant's said amended answer", and ending with the words at the bottom of said page two with the

words "failure of the said Frank Barber to pay the same", for the reason that said plaintiff is now estopped from raising said question, because such question was in the record upon the former trial and was adjudicated against the plaintiff by the Supreme Court of the United States, and also because said plaintiff not having on said first trial insisted on such claim cannot now raise the same.

**TRIAL.**

And on the 20th day of November, 1918, during the October Term, 1918, of the Circuit Court of Johnson County, Missouri, said cause came on for hearing before the Honorable C. A. Calvird, special Judge, and a jury, and said trial commenced, and said trial progressed on said day and upon the following day, on which last-mentioned date the jury returned its verdict in favor of the plaintiff and against the defendant in the sum of thirty-nine hundred twenty-four dollars and thirty cents ($3924.30); to which action the defendant at the time objected and excepted.

**MOTION FOR NEW TRIAL FILED.**

And thereafter, on November 21, 1918, during the said October Term, 1918, of said Circuit Court, and within four days after the rendition of the said verdict, and at the same term during which said cause was tried, the defendant filed its motion for a new trial, which motion was on the same day, and during the said October Term, 1918, overruled; to which action in thus overruling said motion for new trial the defendant at the time duly objected and saved its exceptions to said rulings.

And on the 21st day of November, 1918, and during the October Term, 1918, of said Circuit Court, de-

fendant filed and presented to the Court its petition and affidavit for appeal in due statutory form, which being approved, an appeal was allowed to the defendant to the Supreme Court of Missouri, which said petition and affidavit for appeal is in words and figures as follows, to wit:

## AFFIDAVIT FOR APPEAL.

In the Circuit Court, Within and for the County of Johnson, State of Missouri.
October Term, 1918.

Rosa Barber, Plaintiff,
vs.
Hartford Life Ins. Co.
No. 4619.

Now comes the defendant in the above-entitled cause and prays the Court to grant it an appeal in the above-entitled cause to the Supreme Court of the State of Missouri.

Jones, Hocker, Sullivan & Angert,
Geo. F. Haid,
Jos. C. Jones, Jr., W. E. Suddath,
Attorneys for Defendant.

State of Missouri, County of Johnson. } ss.

W. E. Suddath, being first duly sworn, upon his oath states, that he is one of the attorneys and as such, agent for the defendant in the above-entitled cause, and makes this affidavit for and on behalf of the defendant; that the appeal prayed for by the defendant in the above-entitled cause is not made for vexation or delay, but because defendant and this affiant considers defendant aggrieved by the judgment and decision of the Court.

W. E. Suddath.

Subscribed and sworn to before me this 21st day of November, 1918.

J. M. Caldwell,
(Seal) Clerk of Circuit Court of Johnson County, Missouri.

Filed November 21, 1918.

And on the same day, to wit, November 21, 1918, the defendant was granted leave to and including February 15, 1919, within which to file its bill of exceptions.

**SUPERSEDEAS BOND FILED.**

And thereafter, and in due time, the said defendant gave its supersedeas bond, which was duly approved and filed.

On the 13th day of February, 1919, within the time theretofore allowed, the defendant presented to the Court its bill of exceptions, which was by the Court signed, sealed, allowed and ordered filed, and said bill of exceptions was on the 15th day of February, 1919, duly filed by the Clerk of said Circuit Court and made a part of the record in this case. Said bill of exceptions is in words and figures as follows, to wit:

## BILL OF EXCEPTIONS.

Be It Remembered, That on this 20th day of November, 1918, same being during the October, 1918, Term of the Circuit Court of Johnson County, Missouri, this cause coming on for trial before C. A. Calvird, special Judge of said court, with a jury, the following proceedings were had herein:

Defendant's motion to strike the cause from the docket was by the Court overruled.

Defendant excepted at the time.

Mr. Haid: We object to any trial of this cause, for the reason that the Supreme Court of the United States directed but one thing to be done. It directed a reversal of this cause without remanding, and directed the Supreme Court of this state to take such proceedings only therein as were not inconsistent with this opinion. It did not remand the cause for a new trial. It did not authorize a new trial. We therefore take the position that the Court now, if it undertakes the trial of this cause, is failing to give full faith and credit to the judgment of the United States Supreme Court in this cause when it was there before. In support of this objection I want to offer in evidence a certified copy, certified by the Clerk of the Supreme Court of this state, of the copy of the judgment of the Supreme Court of the United States, and I want to offer in connection with that the opinion of the Supreme Court of the United States as reported in the 245th United States.

Which said opinion of the Supreme Court of the United States as reported in the 245th United States was read from said report.

Defendant's objection to proceeding with this cause is by the Court overruled.

Defendant excepted at the time.

Mr. Haid: Now, we served notice last month upon Mr. Morrow that we were going to ask leave to amend our answer to include therein certain allegations.

Mr. Morrow: We do not object to that. I would like to change my petition asking for seven hundred

fifty ($750.00) dollars attorney's fee instead of five hundred ($500.00) dollars, and I would like to amend that before the answer is filed, and then we will file a reply.

Mr. Haid: There is no objection to that.

Plaintiff thereupon files amended petition.

Defendant files amended answer.

Plaintiff files reply.

Mr. Haid: We want to file a motion to strike out parts of the reply.

The plaintiff objects to any motion to strike out any part of the pleadings at this time, for the reason that both parties have announced ready for trial and the jury is being selected, and plaintiff has made his challenge, and they are out of time. If they keep that up there cannot be any end to this matter.

Mr. Haid: We never saw the reply until just now.

The Court: The Court will permit them to file the motion.

Defendant's motion to strike out parts of the plaintiff's reply is by the Court overruled.

Defendant excepted at the time.

Mr. Haid: We want to especially save our exceptions on the grounds that this matter was *res adjudicata*, and that permitting this thing to be gone into at this time, as stated, fails to give full faith and credit to the judgment of the Supreme Court of the United States.

Afternoon Session.

Plaintiff, to maintain the action upon her part, introduced the following testimony:

## PLAINTIFF'S TESTIMONY.

Plaintiff offers in evidence policy sued upon, No. 174416, dated September 4th, 1893, which is attached to and filed with the petition in this case, issued by the Hartford Life Insurance Company to Frank Barber, and the amount is payable to his wife, Rosa Barber, if living, and otherwise to his legal representatives; same being marked "Exhibit No. 1", and is as follows:

**PLAINTIFF'S EXHIBIT 1.**

No. 174416. Age 35.

The Hartford Life and Annuity Insurance Company.
Hartford, Connecticut.

Policy: Safety Fund Department. Amount: $2,000.

In consideration of the representations, agreements and warranties made in the application herefor, and of the Admission Fee paid; and of the sum of ten dollars on each $1,000 of the Indemnity herein provided for, to be paid to said company, as herein required to create a Safety Fund as hereinafter described, and of three dollars per annum on each $1,000, for expense dues, to be paid as hereinafter conditioned, and of the further payment of all Mortality Calls proportioned to the Indemnity herein provided for, levied against the herein named member to form a Mortuary Fund for the payment of all Indemnity matured by deaths of members, which Mortality Calls, to be levied upon all the members in the department wherein this Certificate is issued whose Certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their re-

spective ages and the aggregate Indemnity at the dates of such death, with due allowance for discontinuance of membership, does hereby issue this Certificate of Membership in its Safety Fund Department to Frank Barber (herein called the member) of St. Louis, County of ....., State of Missouri, with the following agreements:

That ninety days from the receipt by the President or Secretary of said Company of satisfactory proofs, in accordance with forms furnished upon notice of death and with full information as to the manner and cause, of the death of the herein named member while this Certificate is in force, all the conditions hereof having been conformed to by the member, upon presentation and surrender of this Certificate properly receipted, there shall be due and payable, out of the aforesaid Mortuary Fund and not otherwise, the Indemnity of two thousand dollars (less the balance unpaid, if any, of the stipulated contribution to said Safety Fund, with fifty per cent added, together with the unpaid installments of annual expense dues and any mortality or other charges against the member payment of which is not matured), to his wife, Rose Barber, if living, otherwise to his legal representatives. All such payments to be made at the Home Office of said Company in lawful money of the United States.

That said Company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall make a semiannual division of the net interest received therefrom by it, *pro rata* among all the holders of Certificates in force in said Department at such times,

who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to one million dollars, all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time it shall fail by reason of insufficient membership, or shall neglect, if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department, and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list, under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification of said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of

which has been neglected or refused for the period of sixty days from its date.

And said Company further agrees that so long as any Certificate of Membership in its Safety Fund Department shall remain in force, said Fund shall be in nowise chargeable or liable for any use or purpose except as above mentioned.

And said Company further agrees that the aforesaid Mortuary Fund shall be in nowise chargeable or liable for any use or purposes other than for the settlement of Death Claims, except as herein mentioned.

This Certificate is issued by the Company and accepted by the member upon the express conditions and agreements given elsewhere hereon, and assented to as forming part of this contract.

In witness whereof, the said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and delivered this contract, at Hartford, Conn., this 4th day of September, one thousand eight hundred and ninety-three.

President.

(Seal)

Secretary.

Agents of the Company are not authorized to make any endorsements on or to vary the terms of this Certificate.

(O-B-RS., Ed. Aug., '88.) (Fund payable 1st year.)

Condition No. 2 "Of Payments," will be so far modified by notices as to allow four days' grace; increased to fourteen days if resident West of Rocky Mountains.

Annexed is a copy of the Application upon which this Contract is based. Particular attention is invited to it, as this Certificate is issued on the faith

of the answers and agreements therein made, which if not correct render it invalid.

This Certificate is issued by the Company and accepted by the member upon the following express conditions and agreements:

1. Application Made Part of Contract.—The application on the faith of which this Certificate issues, together with each and all the several answers, statements, agreements and verification therein contained, is hereby referred to and made a part of this contract; and the exact literal truth of every representation contained in such application as also in each application for reinstatement of this contract shall be a condition precedent to the validity of this contract and of each reinstatement thereof granted in consideration of such representations.

2. Of Payments.—The member agrees to pay to said Company, for expenses, dues of three dollars per annum on each $1,000 Indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this Certificate shall remain in force; or by *pro rata* installments of the same, in advance, for periods of less than a year: And also agrees to pay said Company, within thirty days from day on which notices bear date, all Mortality Calls determined as within set forth; the proceeds of which, less such charges as are herein prescribed and ten cents on each Call for cost of collection, shall form the Mortuary Fund: And further agrees to pay said Company during the first year of membership the sum of Ten Dollars on each $1,000 towards the Safety Fund, either in a single payment within sixty days from date hereof, or by equal installments thereof, monthly, during the first year of membership, commencing sixty days from date hereof; in default of which payments towards the Safety Fund,

said Company may for this purpose increase said mortality calls by amounts equal to any such due and unpaid installments; and, while the whole or any portion of such required payments shall remain unpaid, said Company may apply toward payment thereof any unapplied sum standing to the credit of this Certificate: But if the laws of any Country, State, County or Municipality shall require a tax to be paid by said Company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax; and the proceeds of such mortality calls shall be charged with the member's proportionate share of fees actually paid by the Company for medical examinations made in the first year of the membership hereby granted. All of which payments are to be made directly to the Home Office of said Company, and not to agents, who are unauthorized to receive them.

3. Conditions of Acceptance.—The member further agrees and accepts this Certificate upon the express condition that if either the Annual Dues, Mortality Calls, or Safety Fund Deposit, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certificate was in force, either from said Company or the Trustee of the Safety Fund: And that failure to make the stipulated payments shall absolutely terminate the member's liability therefor: And that if any final division from said Safety Fund, as hereinbefore provided, shall be made by the Trustee thereof on account of this Certificate: then, and in

all such cases, all liability of said Company and of its Safety Fund, on account of this Certificate, shall cease.

4. Incontestability of Contract.—Five years from the date of full payment hereon towards the Safety Fund, or five years from the date of any reinstatement hereof after such full payment, this contract shall be absolutely incontestable, provided that no default in respect of time and amount of any of the stipulated payments hereon shall have occurred (excluding all waiver whatsoever of promptness in payment unless evidenced by extension of time by the Company's Secretary in writing:) Provided, also, that no understatement of age was made in application herefor; except that in case of such understatement the indemnity recoverable shall nevertheless be such a proportional part only of the whole indemnity named herein as the whole amount of mortality calls paid hereon shall bear to the whole amount of same that should have been paid at the true age; and except further that if the true age at date of application was beyond the age of sixty years then there shall be recoverable only the annual dues and mortality calls paid hereon: And provided further that the occupations prohibited herein shall not be followed without the Secretary's written consent.

5. Giving Notice.—The quarter days for the payment of Mortality Calls shall be the 1st day of March, June, September and December in each year, notices of which will be dated and mailed thirty days before such dates. No Mortality Calls to fall due on the first quarter day following the date of this contract can be made. A notice directed to the address of the

member, or other person designated by the member, appearing at the time on the Company's books, shall be a sufficient notice of any required payment, and a certificate of the Secretary, supported by affidavit of the person whose duty it was to perform the service, of such addressing and of mailing of notice in post office at Hartford shall be taken and admitted as conclusive evidence of such addressing and mailing and be admitted as conclusive proof of due notice to each and every person interested herein: But if the person addressed as aforesaid shall fail to receive a notice of Mortality Call before the 15th day of February, May, August and November in each year, nevertheless this contract shall not discontinue if an amount equal to the amount of the last paid Mortality Call be transmitted to and received by the Company's Secretary on or before the fifth day of the calendar month next following the month in which the aforesaid failure of notice shall have occurred. (If failure of notice of first mortality call occurs, then compute for such purpose an amount, for each $1,000 Indemnity, equal to twice the ratio set in the table hereon against the member's age.) Notices given while any payment that has fallen due hereon shall be unpaid, are to be understood only as notices to reinstate membership and shall not be held to extend maturity of such unpaid payments nor as waiving proof that the member is alive and in good health, certificate of which shall be tendered with all applications for reinstatement; nor shall payments therefor be effective to reinstate membership unless they, together with such health certificate to the Company's satisfaction, shall be received at the Company's Home Office before the member's death.

6. Change of Residence or Address.—In case of change of residence, post office address, occupation, or name of the member, or other person designated to be notified by Company, the member or such person shall at once give notice thereof in writing to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

7. Prohibitions.—If the member shall be personally engaged in blasting, submarine operations, mining underground, manufacturing poisonous or explosive chemicals, retailing intoxicating beverages, as engineer or fireman on railroad locomotive, or in "braking" or "coupling" on, and "making up" of railroad trains, trading or living among savage tribes or nations, or shall be engaged in military service (except in time of peace), or in naval or any marine service, without, in each of these cases, having first obtained the written consent of said Company's Secretary, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair health, or to produce delirium tremens, or to cause death; or shall die by self-destruction—whether sane or insane—or while intoxicated, or from effects of drunkenness, or as the result of a duel, or in consequence of keeping or visiting unlawful or disreputable resorts, or while violating or attempting to violate the laws of any Nation, State, Province or Municipality; or if there has been any concealment, misrepresentation or false statement or statement not true made in the application on which this Certificate issues; or if the conditions of this Certificate shall not be in all respects observed and performed by the member to whom this Certificate issues; then, and in all such cases, this Certificate

shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid hereon.

8. Travel and Residence.—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers and sailing vessels, and to visit or reside, in addition to the residence named in the application herefor, in any portion of the world where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

9. Limitation of Action.—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim upon or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said member it shall be deemed a waiver on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid hereon. And it is further expressly agreed in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from the death of said member, that the person or persons so commencing suit or proceeding shall pay to said Company the sum of two hundred dollars as its reasonable attorney fees and damages, in addition to the taxable costs and allowances in the case.

10. Debts and Liens.—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary

herein, or their assigns, to said Company at the time of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness, and the right to deduct and withhold the amount of any such account or indebtedness in payment thereof. But nothing herein contained shall be held to constitute a waiver of forfeiture if any of the hereinbefore stipulated payments shall not be paid when due in the manner set forth in the conditions of this Certificate.

11. Assignments.—This Certificate shall not be assigned or transferred, unless with the concurrent action of the member and beneficiary or beneficiaries, assignee or assignees hereunder; nor unless with the consent in writing of said Company's Secretary and immediately filing with him a copy of all such assignments or transfers; nor, unless a claim hereunder, made by an assignee, be subject to proof of interest; nor, unless the amount recoverable hereunder by any such assignee (except such assignee shall bear to the member the relationship of wife, child, parent, brother or sister) be limited to the value of the interest proven. The Company shall not be responsible for validity of assignments.

12. Powers of Agents.—Agents of the Company cannot alter or waive any of the conditions of this Certificate, nor issue permits of any kinds, and they are not authorized to make any indorsements hereon, nor to receive or receipt for money on behalf of this Company other than for Admission Fees, for the receipt of which alone the delivery of this Certificate is acknowledgment. It is further expressly agreed that if the member shall entrust money to an agent for payment of Mortality Calls, Dues or Safety Fund

Deposits the Company shall not be held responsible therefor until all moneys thus entrusted shall have been actually received in the Home Office of the Company before the last day fixed for payment of such moneys shall have passed.

13. Waiver of Conditions.—Alteration of the conditions of this Certificate or waiver of forfeiture thereof shall not be effective unless made in writing, signed by the Company's President or Secretary.

14. This contract shall not go into effect until delivered to the member or designated beneficiary within the lifetime and good health of the member, nor, if delivered while any part of the payments required by its terms shall be past due and unpaid at the Company's Home Office.

Trustees' Contract.

This agreement, made and entered into this thirty-first day of December, A. D. 1879, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford, in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; witnesseth:

Whereas, the party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words, to wit:

"That said Company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever thereafter said sum shall be attained, make a semiannual division of the net interest received therefrom by it, *pro rata* among all the holders of Certificates in force in said department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to one million dollars, all subsequent receipts therefor shall be divided by the said Company in like manner as the interest."

"Said Company further agrees that if at any time after said Fund shall have amounted to three hundred thousand dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if justly and legally due,

to pay the maximum indemnity provided for by the terms of any Certificate issued in said department, and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list, under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from its date."

"And said Company further agrees that so long as any Certificate of membership in its Safety Fund Department shall remain in force, said Fund shall be in nowise chargeable or liable for any use or purpose except as above mentioned."

Now, therefore, the party of the first part, in consideration of the covenants and agreements herein-

after contained on the part of the party of the second part and in accordance with its agreement with its Certificate holders as hereinbefore recited, does hereby appoint the party of the second part Trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said Trustee, as soon as received the sum of ten dollars on each thousand dollars of the amount of each and every Certificate of membership issued by it in the aforesaid department until said Fund shall amount to one million dollars, to be by said Trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expenses of said trust, to be paid over to the party of the first part, as hereinafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements: And when said Trustee shall pay the income, as above, to the party of the first part, or, shall make any other payments from said Fund, as required by the terms hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

And the party of the second part, for itself and its successors, in consideration of such deposits and of a reasonable compensation for its services and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors and with each of the holders of the aforesaid Certificates that it will receive, hold, manage and dispose of all said deposits made with it by said Insurance Company, principal and income, in accordance with the uses and purposes specified in the herein-

before recited agreements of the party of the first part with its Certificate holders; and shall at all reasonable times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of an interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, addresses, numbers and amounts of Certificates of all persons thus entitled.

That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the Safety Fund of the said Insurance Company, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses) for five years from July 1, 1879, or until such time thereafter as said Fund shall amount to three hundred thousand dollars, par value, of the bonds purchased for said Fund, when the party of the second part will pay over to the party of the first part, semiannually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses) to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall

amount in such bonds, at their par value, to one million dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund into money and divide the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained: Said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper division thereof as agreed with its Certificate holders.

All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect of the party of the first part; and all payments required herein to be made to the Certicate holders by the party of the second part to be made at the office of said Trustee or of the successor in said trust.

The necessary expenses connected with the management of said Fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned bonds, together with the cost of the stationery and postage used in replying to requests for information of the condition of said Fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expense to be included in and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited

agreements of the party of the first part with its Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to such successor.

In witness whereof, the party of the first part has affixed hereto the corporate seal of said Insurance Company and caused these presents to be signed by its President and Secretary.

And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands.

Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

Hartford Life and Annuity Ins. Co.,
By E. H. Crosby, President, and
Stephen Ball, Secretary.

(Seal)

Security Company,
By Robert E. Day, President, and
William L. Matson, Treasurer.

(Seal)

Table

Of graduated Mortality Ratios for every $1,000 of Death Loss, on each $1,000 of a total Indemnity in force of $1,000,000.

| Age | Ratio | Age | Ratio | Age | Ratio | Age | Ratio |
|---|---|---|---|---|---|---|---|
| 15 to 21 | $0.65 | 33 | $0.91 | 44 | $1.20 | 55 | $1.92 |
| 22 | .67 | 34 | .94 | 45 | 1.22 | 56 | 2.03 |
| 23 | .69 | 35 | .97 | 46 | 1.25 | 57 | 2.15 |
| 24 | .71 | 36 | 1.00 | 47 | 1.30 | 58 | 2.32 |
| 25 | .73 | 37 | 1.03 | 48 | 1.35 | 59 | 2.50 |
| 26 | .75 | 38 | 1.06 | 49 | 1.40 | 60 | 2.68 |
| 27 | .77 | 39 | 1.09 | 50 | 1.47 | 61 | 2.86 |
| 28 | .79 | 40 | 1.12 | 51 | 1.54 | 62 | 3.08 |
| 29 | .81 | 41 | 1.14 | 52 | 1.63 | 63 | 3.30 |
| 30 | .83 | 42 | 1.16 | 53 | 1.72 | 64 | 3.65 |
| 31 | .85 | 43 | 1.18 | 54 | 1.81 | 65 | 4.00 |
| 32 | .88 | | | | | | |

These ratios decrease in proportion as the total indemnity in force increases above $1,000,000 in amount, and are calculated so as to cover the stipulated cost of collection.

This Company has no agents authorized to receive money on Mortality Calls, Dues, or Safety Fund.
Policy No. 174416.

Hartford Life and Annuity Insurance Company of Hartford, Connecticut.

Certificate of Membership Safety Fund Department.
Amount, $2,000.
Name, Frank Barber.
Agent, Mat Zener.

Read carefully all the conditions of this Certificate. No person should be a party to a contract without knowing all its conditions.

After an agent has delivered this Certificate, and collected the Admission Fee, no other payment connected with the indemnity under this Certificate must be made to the agent without the production of a receipt signed by the Company's Secretary.

Always give number of this policy in writing or remitting to Home Office.

Condition 2 "Of Payments" is modified to make first Expense Dues become payable October 1st, 1893 (To be in the Home Office within 4 days thereafter). First Installment of Deposit payable December 1st, 1893.

Quarterly calls payable March, June, September, and December 1st, of each year.

Annexed is a copy of the Application upon which this Contract is based.

Plaintiff offers in evidence a letter from T. F. Lawrence, secretary of the company, to Morrow & Kelley, dated July 8th, 1910, together with the stipulation that this letter is signed by T. F. Lawrence, secretary of the Hartford Life Insurance Company.

the same being marked "Exhibit No. 2", and is as follows:

**PLAINTIFF'S EXHIBIT 2.**

ICL

July 8th, 1910.

Messrs. Morrow & Kelley,
No. 808 Laclede Bldg.,
St. Louis, Mo.

Gentlemen:

We have your two favors of the 1st inst., and would state in the first place that this company did not take over the Hartford Life & Annuity Insurance Company. The name of this company was at one time the Hartford Life and Annuity Insurance Company. In 1897, by a special act of the Connecticut Legislature, the name was changed to the Hartford Life Insurance Company, but the Hartford Life Insurance Company is exactly the same corporation as was the Hartford Life & Annuity Insurance Company, and this corporation is carrying out the contracts of the Hartford Life & Annuity Insurance Company under the name of the Hartford Life Insurance Company.

In reference to certificates Nos. 128293 and 174416 on the life of Frank Barber, we have to advise you that these certificates were issued February 14th, 1890, and September 4th, 1893, respectively, and **lapsed for non-payment of the call due March 1st, 1910**, were then canceled in accordance with their terms, and are now of no effect. The certificates were carried at exact cost, the payments made having covered only the dues stipulated in the contract for expenses, the stipulated deposit to the Safety Fund,

and the member's share of the actual death losses incurred in the Men's Division of the Safety Fund Department of the company.

There is no reserve which could have been applied for any surrender value, and the certificates provided for death indemnity only and that only in case they were in full force and effect.

There is no liability on the part of the company on account of these certificates, and we are therefore not complying with your request and forwarding you blanks for proof of death, as the member did not die while the certificates were in full force and effect.

Yours very truly,

T. F. Lawrence,

Secretary.

Plaintiff offers in evidence the original answer filed by the defendants in this case on the 11th day of January, 1912, together with a file mark on the back of it, which recites, "Filed January 11th, 1912. W. H. Henshaw, Clerk of the Circuit Court."

Mr. Jones: We are objecting to the introduction of the answer, if the Court please, on the ground that it is incompetent, irrelevant and immaterial, and has been superseded by subsequent answers.

Objection overruled by the Court; defendant excepted at the time.

Plaintiff here offers in evidence file mark on the back of the defendant's answer to plaintiff's amended petition on October 5th, 1912, being as follows: "Filed October 5th, 1912, W. H. Henshaw, Clerk," the same being marked "Exhibit No. 4".

Plaintiff offers in evidence file mark on the back

of amended answer to plaintiff's amended petition in this case, which has been amended three times. Filed November 25th, 1912, same being as follows: "Filed November 25th, 1912. W. H. Henshaw, Clerk," the same being marked "Exhibit No. 5".

Plaintiff offers in evidence certified copy of the annual statement of the Hartford Life Insurance Company, filed with the Superintendent of Insurance of the State of Missouri for the year ending December 31, 1909, the same being marked "Exhibit No. 6".

The defendant objects to the introduction of this statement because it is wholly incompetent, immaterial to any issue in this case, and because the matters set forth in this report are not matters which are required by law, and the matters in said report to which the plaintiff calls attention are not matters which are required to be set forth by law, because it is not shown that the matters contained in said report were made either within the knowledge of the person who certified thereto, or that they were within the duties of the officers or agent who made the statement to the Insurance Department, and because the matters sought to be proved by said report are not within the issues made by the plaintiff, nor is there any notice by the plaintiff that such proof would be offered, because the statement does not show or tend to show any facts as it existed at the time the mortuary call was levied or when the same was payable; also object that the statement contained in said report relates to a time long anterior to the lapse of the policy and such statements are therefore immaterial, and object further that this insurance company issued a great number or class of

policies and a large portion of that has no reference whatever to the class of policy sued on here. And further that there cannot be any claim as against the company because of the assessment since in both of these cases and the Dresser decision it is held that the only result that follows an excessive assessment is that it must be applied to the next succeeding assessment.

Objections overruled by the Court; defendant excepted at the time.

Mr. Morrow: Gentlemen of the jury, the date of this certificate, 31st day of December, 1912, for the year 1909, and I am going to read you the ledger asset in regard to the Safety Fund. Safety Fund in Security Company of Hartford, one million one hundred sixty-six thousand three hundred fifty-four dollars twenty-nine cents ($1,166,354.29). Non-ledger assets, interest due $485.92 and accrued $40,748.66, total $41,234.53. Interest due $4,000.00, and accrued $4,308.05; total, $8,308.05. Interest due, $777.46. Total interest and rents due and accrued, $50,818.81. Market value of real estate over book value, $37,269.00. Due from other companies for losses or claims on policies of this company, reinsuer, $6,355.71. Gross premiums due and unreported on policies in force December 31st, 1909, less reinsurance premiums, $1,089.28, by renewals $36,437.14. Gross deferred premiums on policies in force December 31st, 1909 (less reinsurance premiums), $6,596.54. New business renewals, $62,392.08. Totals, $7,685.82. New business renewals, $98,829.22. Deduct loading, $5,380.08, renewals $19,765.85. Net amount of uncollected and deferred premiums, $2,305.74. New busi-

ness renewals, $79,063.37. All other assets (giving items and amounts), net premiums in course of collection, Safety Fund Department, $185,000.00. Accrued interest Safety Fund Department, $13,311.33. Gross assets, $4,897,418.08. Commuted commissions; agents' debit balances, gross, $11,987.66. Loans on personal security, endorsed or not; bills receivable, $22,556.91, and this is carried out on a blank without heading on it, $22,556.91. Book value of ledger assets over market value, Stock Department, $35,636.43; Safety Fund Department, $87,695.94.

Mr. Haid: If the Court please, I want to move to strike out that matter, because naturally that has reference only to the Stock Department and has absolutely nothing to do with the Safety Department except in particular instances where the Safety Fund Department is referred to, and all those others go to the Stock Department.

Mr. Morrow: I am telling the jury that I don't insist on anything except the Safety Fund Department, but I couldn't take that out, and I am reading that part of it, and I am offering the whole report now, and I want, your Honor, to state to the jury if there is anything that bears in reference to anything except the Safety Fund Department, that it should not be considered by them.

The Court: Well, that is so ordered, then.

**W. L. CHANEY,**

being sworn upon the part of plaintiff, testified as follows:

**Direct Examination,** by Charles E. Morrow.

Q. Where do you live? A. I live in Warrensburg.

Q. What is your name? A. Walter L. Chaney.

Q. Are you a lawyer, Mr. Chaney? A. Yes, sir.

Q. Are you a member of this bar? A. Yes, sir.

Q. How long have you been practicing law? A. Have been practicing here in this county sixteen years.

Q. Did you ever hold any official position in this county? A. Prosecuting Attorney four years.

Q. Well, you are now engaged in the active practice of law in Warrensburg, and have been since your admission? A. Yes, sir.

Q. Mr. Chaney, there is now a case on trial before this jury entitled Rosa Barber, plaintiff, v. Hartford Life Insurance Company, defendant, upon a policy or certificate of insurance for $2,000.00. The answer of the defendant covers a number of pages and pleads first that the policy lapsed by failure to pay the assessment or mortuary call and dues, and, second, that the matters in question with reference to the mortuary fund all have been formerly adjudicated by a court of competent jurisdiction of the State of Connecticut and in the Supreme Court of the State of Connecticut; and also that the Statutes of Missouri, known as Section 7068, with reference to the penalties for vexatious refusal to pay on insurance policies, with which you are familiar, is unconstitutional because it is a violation of both the State and Federal Constitutions. The reply is, first, a general denial; second, it pleads that the defendant has waived certain alleged forfeitures pleaded by it for a number of reasons, and that the defendant is estopped to maintain said defenses with reference to these forfeitures, and, further, that the defendant company had collected certain 2 per cent taxes upon assessments and done so wrongfully and had it in its possession and

it ought to be applied to the payment of these assessments. There was a notice served upon the plaintiff to take depositions in this case and also in another case between the same parties involving a policy of insurance for $1,000 wherein the issues were somewhat similar. And depositions were taken, in fact, on this notice, in the City of Hartford, Connecticut, for three days, commencing on the 17th, 18th and 19th days of September, 1912. The plaintiff's attorney to travel from St. Louis, Mo., to the City of Hartford, Connecticut, and attend the taking of these depositions. Depositions covered 160 pages of typewritten matter and a number of exhibits, which were also attached to the depositions, taking them by letters of the alphabet they are taken from "A" to "Z" one time and then doubling back the letters from the beginning to "MM".

The defendant again served notice on the plaintiff and her attorneys in St. Louis to take depositions in Hartford, Connecticut, on the 9th day of November, 1918, and Mr. Morrow, one of the plaintiff's lawyers, went from St. Louis to Hartford, Connecticut to attend the taking of these depositions. They consisted of thirty-one pages and with a number of exhibits that I now present to you. The trial of this case before took about two days. What, in your opinion, is a reasonable attorney's fee for the plaintiff's attorneys in the prosecution of this case?

Mr. Jones: The defendant objects to the question for the reason that there is no evidence in this case that the refusal of the defendant to pay the amount claimed by the plaintiff in this action on this policy is vexatious; for the further reason that if the statutes of this State, with reference to the allowance of

damages and attorney's fees, is construed as authorizing a recovery of damages and attorney's fees without any evidence of vexatious delays, deprives the defendant of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States. Defendant further objects to the question because the question, as put, authorizes the witness to include in the opinion to be given with reference to the question of attorney's fees and work, the matters taken subsequent to the first trial of this case; also for the further reason that the form of the question asked for attorney's fees for work done in both of these cases.

Mr. Morrow: The question does not include the trial of the other case, and the only reason that I mentioned the other case was for the reason that work was done also in another case, and I suppose it would lessen the fee if anything.

The Court: Do you exclude the work done in the other case?

Mr. Morrow: Yes, sir.

Objection overruled by the Court. Defendant excepted at the time.

Q. What is your answer? A. Seven hundred fifty to eight hundred dollars would be very reasonable, I would think.

**J. R. ROTHWELL,**

being sworn upon the part of plaintiff, testified as follows:

**Direct Examination,** by Mr. Morrow.

Q. Mr. Rothwell, just state your name. A. J. R. Rothwell.

Q. Are you a lawyer? A. Yes, sir.

Q. How long have you been practicing law? A. Since 1906.

Q. Do you hold any official position in the county? A. I am Prosecuting Attorney.

Q. How long have you been Prosecuting Attorney? A. Two years.

Q. Mr. Rothwell, did you hear the question that I just put to the witness Mr. Chaney, that was on the stand; the hypothetical question? A. I did.

Q. Do you understand it? A. I think I do.

Q. Now, assuming the statement in that question what, in your opinion, would be a reasonable attorneys' fee for the services?

Mr. Jones: The defendant objects to that on the same grounds as to the question propounded to the previous witness.

Objection overruled by the Court; defendant excepted at the time.

A. Why, $750.00 would be a very reasonable fee, in my opinion.

(Witness excused.)

It is admitted that Mr. Morrow and Mr. Kelly, attorneys for plaintiff, live in St. Louis; that Mr. Morrow actually traveled from St. Louis to Hartford,

Connecticut, to attend to the taking of both of the depositions referred to in the hypothetical question, and that Mr. Morrow attended to the taking of the other depositions, as stated in the hypothetical question.

**Plaintiff here rests her case.**

Defendant, to maintain the issues upon its part, introduced the following testimony:

## DEFENDANT'S EVIDENCE.

Mr. Haid: If the Court please, the defendant desires to offer first in evidence deposition of the witnesses taken on the 17th day of September, 1912, and the following days, and to offer first the stipulations which were entered into at that time, and then offer the deposition of Thomas F. Lawrence, with the understanding that the exhibits are to take the same markings as marked in the depositions heretofore, and which exhibits are considered as being offered in evidence in connection with the reading of depositions.

Which depositions and references to offer of exhibits are as follows:

Rosa Barber
vs.
Hartford Life Insurance Company. } No. 4619.

The following depositions are taken in the above-entitled causes pursuant to the consent of parties and notices to take depositions hereto attached, on this

17th day of September, 1912, at 11 o'clock a. m., all formal notice and issue of *dedimus* and other formalities being hereby waived; the plaintiffs in these cases being represented by Charles E. Morrow and the defendants being represented by James C. Jones.

It is stipulated between the parties that the testimony about to be taken may be used in either of said cases so far as material or relevant.

The signature of the witnesses in all instances is waived.

It is further stipulated that unless at the time it is offered objection is made to an exhibit because it is a copy, copies of original papers attached to this deposition may be used with the same force and effect as originals, the same having been properly testified about by the witness as a copy.

It is stipulated that the testimony about to be taken may be taken in shorthand by Nellie W. Annis, a notary public, and may thereafter be transcribed out of the presence of the witnesses.

It is further stipulated that the witnesses in these cases shall be sworn by Miss N. W. Annis, a notary public in and for the City of Hartford, County of Hartford and State of Connecticut.

If at the close of depositions on behalf of the defendant the plaintiff in either of said cases desires to take testimony in her behalf, said testimony may be taken pursuant to and controlled by the foregoing stipulations.

It is further stipulated that the exhibits may be bound separately from the depositions and filed in the court with the depositions, but that said exhibits shall be properly identified and attested by the notary.

**THOMAS F. LAWRENCE,**

having been duly sworn by Nellie W. Annis, notary public, in answer to interrogatories by Mr. Jones, testified as follows:

Q. State your name, age, residence and occupation, please. A. My name is Thomas F. Lawrence; I reside in the City of Hartford, Connecticut; am 35 years old, and my occupation is that of vice-president and secretary of the Hartford Life Insurance Company.

Q. How long have you been vice-president of the Hartford Life Insurance Company? A. Since May, 1911.

Q. How long have you been secretary of the Hartford Life Insurance Company? A. Since September, 1907.

Q. Prior to that you were what? A. Prior to that I was assistant secretary of the company, from December, 1903.

Q. Who was formerly the secretary of the company? A. Charles H. Bacall.

Q. Is he living or dead? A. He is dead. He died in 1907, I think, in the month of March.

Q. What is the paper I now show you? A. That is a copy of the charter of the Hartford Life Insurance Company, with all amendments thereto.

Q. This paper with the amendments is the charter and the amendments as they existed after May 12, 1903, and up to the present time, the paper referred to being a copy of charter of the Hartford Life Insurance Company? A. It is.

The defendant offers paper referred to in evidence and is marked "Defendant's Exhibit A".

## DEFENDANT'S EXHIBIT "A".

### Charter of the Hartford Life and Annuity Insurance Company.

At a General Assembly of the State of Connecticut, holden at New Haven, in said State, on the first Wednesday of May, in the year of our Lord One Thousand Eight Hundred and Sixty-Six:—

Incorporating the Hartford Accident Insurance Company.

Resolved by the Assembly:

Section 1. That D. F. Seymour, Charles H. Northam, E. N. Kellogg, John A. Butler, C. M. Pond, Austin Dunham, E. H. Fenn, Hiram Bissell, Elisha T. Smith, William Hammersley, E. Thomas Lobdell, Stiles D. Sperry, Milo Hunt, John W. Danforth, Chester Adams, D. A. Rood, George Sexton, Joseph H. Sprague, H. W. Conklin, H. C. Beckwith, F. A. Marcy, C. C. Kimball, James B. Crosby, Julius Converse, H. C. Robinson, J. E. Coleman, Jacob Knous, John R. Buck, and all such persons as hereafter may become duly associated with them as stockholders, their successors and assigns forever, be, and they are hereby constituted a body corporate and politic, by the name of the "Hartford Accident Insurance Company", and by that name shall be and hereby are empowered to purchase, have, hold, possess and enjoy to themselves and their successors, lands, tenements, hereditaments, goods, chattels, effects, real and personal estate of every kind; and the same to sell, grant, alien, convey and dispose of; to

sue and be sued, plead and be impleaded in all courts of justice; to adopt and use a common seal, and the same to change at pleasure; and to enact and enforce such by-laws and regulations as they may deem proper for the well ordering and government of said corporation; provided, that such by-laws and regulations be not repugnant to the Constitution and laws of this State, or of the United States.

Sec. 2. The capital stock of said corporation shall be not les than two hundred thousand dollars, and at any time hereafter may be increased by said corporation to any sum not exceeding one million dollars, and shall be divided into shares of one hundred dollars each; and each subscriber to said capital stock shall pay into the treasury of said corporation, at the time of subscribing, an installment of ten dollars on each share of stock by him subscribed; and within sixty days after the organization of said company shall secure the payment of the remaining ninety dollars on each share, either by such bonds and mortgages on real estate, or by such endorsed promissory notes as shall be approved of by two-thirds of the directors of said corporation; and the money so secured to be paid, shall be payable in such installments, and at such times, as the directors may determine; and such endorsers shall have a lien on the stock for which such note or notes are given.

Sec. 3. The office of said Company shall be located at Hartford, and all the affairs of said corporation shall be managed and controlled by a board of not less than seven directors (the number of said directors to be determined by the by-laws of said Company), who shall be chosen from among and by the stockholders, which choice shall be made by a majority of the votes

east; and said directors shall hold office for one year, and until others are chosen in their stead; and the annual meetings for the choice of said directors shall, after the first election, be held at the City of Hartford, on the first Tuesday in May, in each year, or in such other day in the month of May as shall be appointed by the by-laws of said corporation. In the choice of directors as aforesaid, each stockholder present, or represented by his attorney, shall be allowed one vote for each and every share of stock by him then held; and the stockholders may determine what number of directors may constitute a quorum for business.

Sec. 4. If it shall so happen that an election of directors of said corporation shall not take place at the time of the annual meeting thereof, in any year, said corporation shall not be dissolved thereby, but an election may be had at any time within one year thereafter, the time to be fixed upon and notice given by the directors last chosen, and public notice by orders of the directors shall always be given at least ten days previous to any meeting of the stockholders, in a newspaper printed in Hartford, and in such other way as may be deemed expedient; and the president shall have power to call special meetings of the stockholders whenever thereto requested by a majority of the directors.

Sec. 5. The directors may, by a major vote, fill any vacancy which may occur in their board between the annual meetings of the stockholders, by choosing a director or directors from among the stockholders, who shall continue in office until a successor or successors shall be chosen; and the directors may choose a president and vice-president of their corporation

from their own number, and a secretary, and may appoint such other officers, clerks and agents, and establish such agencies in this State and elsewhere, as they may deem necessary and convenient, fix their compensation, take bonds of any and all of them for the faithful performance of their duties, make such covenants and agreements as may be deemed necessary, and perform such other acts, and exercise such other powers as they shall deem expedient for the well ordering of the affairs of said Company. The president and vice-president may hold their office for one year, and until others are chosen, but the other officers, agents and servants of said Company may be displaced and new ones appointed at the pleasure of the directors. In the absence or disability of the president, the vice-president shall preside, and if both are absent or disabled, the directors shall choose a president, *pro tempore*.

*Sec. 6.* Said corporation may insure persons against and make all and every insurance connected with accidental loss of life, or personal injury sustained by accident of every description, on such terms and conditions and for such periods of time, and confined to such countries and such persons as shall be from time to time ordered and provided for by the by-laws of said corporation; and may make insurance based upon the lives of persons, and may make contracts upon any and all conditions appertaining to or connected with life risks; and suits at law may be maintained by any stockholder or person insured by said Company against said corporation, for losses or injuries insured against by said Company, in accordance with the terms of the contract of insurance and the form of the policies issued by said Company, if payment shall

be withheld for more than thirty days after the same shall be and become payable by the terms of the policy of insurance or other contract, and after said corporation shall have been duly notified of such loss or injury; and said policies of insurance and all other contracts of said Company may be made with or without the common seal of said Company, and shall be binding and obligatory on said corporation according to the true intent and meaning of such policies or contracts. No stockholder shall be responsible in his private capacity and estate for any debt or liability of said Company, but in case of a violation of the charter, intentionally, or of fraud, the person guilty thereof shall be personally liable to said corporation, or to the assured, as the case may be.

Sec. 7. To carry out the provisions of this act, and to organize the said corporation, Jasper H. Bolton, Stiles D. Sperry and E. Thomas Lobdell are authorized and appointed to receive subscriptions to the capital stock thereof, and the first installment thereon, and are authorized to close the subscription books of said Company when the capital stock shall be fully subscribed, or in case that said capital stock shall be over-subscribed, to distribute and apportion the same among the subscribers as the said persons so appointed as aforesaid to distribute may deem proper. And when the capital stock shall have been subscribed for, and the first installment has been paid thereon, and a notice published in some newspaper printed in Hartford three weeks before the time of meeting, the said subscribers may meet together at the time and place named in said notice, and adopt such by-laws, rules and regulations as may be necessary and convenient for commencing and carrying on business

under this act. They may also, at the same or some subsequent time, choose a board of directors in the manner hereinbefore provided, who shall hold their offices, with all the powers given to directors by this act, until others are chosen to supply their places. And when the by-laws have been adopted, and the directors have been chosen as aforesaid, and when the board of directors shall have been organized by the choice of a president and secretary, the said corporation may exercise all the powers and privileges conferred by this act.

Sec. 8. This resolution shall take effect from the date of its passage, and may be altered, amended or repealed at the pleasure of the General Assembly.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the first Wednesday of May, in the year of our Lord One Thousand Eight Hundred and Sixty-seven:—

## Amending the Charter of the Hartford Accident Insurance Company.

Upon the petition of the Hartford Accident Insurance Company, of Hartford:

Resolved by this Assembly:

Section 1. That the name of said Company be, and the same hereby is, changed to that of the Hartford Life and Accident Insurance Company.

Sec. 2. All actions, or causes of action, suits or demands, of any and every kind; and all the rights, duties and privileges; and all the estate, real, personal, or mixed; and all debts due to and from said Company; under the name of the "Hartford Acci-

dent Insurance Company", shall be and remain to and against said Company, by the name and style of the "Hartford Life and Accident Insurance Company", the same as if said original name had not been changed.

Sec. 3. The capital stock of said Company existing and established under the name of the "Hartford Accident Insurance Company", as well as that which shall be created hereafter under the name of the "Hartford Life and Accident Insurance Company", shall be held subject to and transferable in accordance with the charter and by-laws of said Company, the same as if the name of said Company had not been changed. And the subscribers or holders of said capital stock shall make payment for the same in such installments, and at such times and places as the directors shall determine. And if any subscriber, or any holder of any share or shares of said capital stock shall neglect or refuse to pay any installment as aforesaid, or shall neglect or refuse to secure the payment of any unpaid portion of his stock as aforesaid, for the space of thirty days after the same shall be required or become due, and after he or they have been notified thereof in accordance with the by-laws, the stock of such negligent stockholder may be sold by the directors, at public auction, at the Brokers' board in the City of Hartford, or elsewhere, as the directors shall elect; and of any such sale notice shall be given, at least twenty days prior to the sale, by one or more publications in some newspaper printed in Hartford; and the proceeds of such sale shall be first applied in payment of the installment or installments called for, and the expenses attending the sale, and the balance, if any, shall be refunded to the owner of

said stock; and such sale shall in all respects entitle the purchaser to all the rights of a stockholder, to the extent of the shares so bought.

Sec. 4. Said company may issue policies for the benefit of, and payable to, any married woman, or child or children; and any contract of insurance, thus issued, by whomsoever the same may have been procured, shall be to the extent expressed in the policy, the sole and separate estate of the married woman, child or children, to whom the policy, by its terms, shall be payable. And the discharge of such policies by such married woman or her assigns, or by such children (or their guardians if minors), shall be a valid discharge of the same. And said company shall be, and hereby is authorized to re-insure any and all risks taken under its charter, and upon such conditions as may be prescribed or approved by the directors.

Sec. 5. Said company may from time to time invest, collect and re-invest the whole or any portion of its capital and assets, in any bonds or stocks of the United States, or of any of the States of the United States, or of any corporations which are or may be created under authority of the United States or of any of said States; or in notes or bonds, secured by mortgage of real estate or otherwise; as shall be approved by the directors and in conformity with the charter and by-laws of said company.

Sec. 6. It shall be the duty of said company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life-risks of whatever description, other than mere accident risks, said amount to be computed upon an assumption of mortality at the rates known as the "Actuaries'" or "Combined

Experience" rates, and at a rate of interest of not less than four per cent nor more than five per cent per annum, as the directors shall from time to time determine; and such reserve shall be exempt from any liability for losses or claims arising from any general accident policy or contract insuring against death or disability caused by accident; and no dividend or interest shall be paid to either stockholders or policyholders by which payment said reserve would be reduced below the minimum amount required by the provisions hereof. Provided, that nothing herein shall be construed to exempt the capital stock of the company from liability for all its contracts.

Approved, May 22d, 1867.

At a General Assembly of the State of Connecticut, holden at New Haven, in said State, on the first Wednesday of May, in the year of our Lord, One Thousand Eight Hundred and Sixty-eight:—

Amending the Charter of the Hartford Life and Accident Insurance Company.

Upon the petition of The Hartford Life and Accident Insurance Company, of Hartford:

Resolved by this Assembly:

Section 1. That the name of said Company be, and the same hereby is changed to that of the Hartford Life and Annuity Insurance Company.

Sec. 2. All actions or causes of actions, suits or demands of any and every kind, and all rights, duties and privileges, and the estate, real, personal, or mixed, and all debts due to or from said Company under the name of the "Hartford Life and Accident Insurance

Company", shall be and remain to and against said Company, by the name and style of the "Hartford Life and Annuity Insurance Company", the same as if their said name had not been changed.

Sec. 3. Said Company are authorized and empowered to grant or purchase annuities, confer endowments and make contracts, upon any and all conditions appertaining to, or connected with life risks, annuities and reversionary interest of whatever kind or nature.

Sec. 4. This act shall take effect from and after its passage.

Approved, June 17th, 1868.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the Wednesday after the first Monday, in January, in the year of our Lord, One Thousand Eight Hundred and Seventy-nine:—

Authorizing a Reduction of the Capital Stock of the Hartford Life and Annuity Insurance Company.

Resolved by this Assembly:

That the Hartford Life and Annuity Insurance Company, Hartford, Connecticut, be, and they hereby are, authorized to reduce their Capital Stock from the sum of three hundred thousand dollars to an amount not less than two hundred and fifty thousand dollars.

Approved, February 27, 1879.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the Wednesday after the first Monday, in January, in the year of our Lord One Thousand Eight Hundred and Eighty-two:

Amending the Charter of the Hartford Life and Annuity Insurance Company.

Resolved by this Assembly:

That section six of an amendment to the charter of the Hartford Life and Annuity Insurance Company, approved May twenty-second, 1867, shall be and hereby is amended to read as follows:

Section 6. It shall be the duty of said company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life risks of whatever description other than mere accident risks, and other than such contracts as it has made or may make wherein the sum payable upon the death of the person named in any such contract is made contingent upon an assessment collected from the associated holders of such contracts, said amount to be computed upon an assumption of mortality at the rates known as the actuaries' or combined experience rates, and at a rate of interest of four per cent per annum; and such reserve shall be exempt from any liability for losses or claims arising from any general accident policy or contract insuring against death or disability caused by accident, and no dividend or interest shall be paid to either stockholders or policyholders by which payment said reserve would be reduced below the minimum amount required by the provisions hereof; provided, that the capital stock of the com-

pany shall be liable for all its contracts without exemption by reason of anything herein contained.

Approved, April 25, 1882.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the Wednesday after the first Monday in January, in the year of our Lord One Thousand Eight Hundred and Ninety-seven:

Resolved by this Assembly:

Section 1. That the corporate name of the Hartford Life and Annuity Insurance Company, a corporation located and doing a life insurance business in Hartford, in this State, be and the same is hereby changed to the Hartford Life Insurance Company, by which name it shall be hereafter known and called.

Sec. 2. All contracts, rights, obligations, property, privileges and franchises of the said Hartford Life and Annuity Insurance Company shall be and remain unimpaired and vested in the corporation under its new name.

Approved, March 3, 1897. Adopted, May 11, 1897.

At a General Assembly of the State of Connecticut, holden at Hartford, in said State, on the Wednesday after the first Monday in January, in the year of our Lord One Thousand Nine Hundred and Three:

Amending the Charter of the Hartford Life Insurance Company.

Resolved by this Assembly:

Section 1. That the Hartford Life Insurance Company is hereby authorized to insure persons against loss of time and expense resulting from disease.

Sec. 2. This resolution shall take effect when approved by a majority vote of the stockholders of said Company, and a certified copy of said vote of approval shall be lodged on file in the office of the Secretary of State.

Approved, May 12, 1903.

State of Connecticut, } ss.
Office of the Secretary. }

I, ....., Secretary of the State of Connecticut, and keeper of the seal thereof, and of the original record of the Acts and Resolutions of the General Assembly of said State, Do Hereby Certify that I have compared the annexed copy of the Resolution Incorporating The Hartford Accident Insurance Company and the several amendments thereto, with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I Further Certify, that the said original record is a public record of the said State of Connecticut, now remaining in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said State, at Hartford, this .....

.....
Secretary.

Q. I call your attention to the following portions of charter, being section 6 of the original charter, which reads: "And may make insurance based upon the lives of persons, and may make contracts upon any and all conditions appertaining to or connected with life risks." I also call your attention to section 6, amendment of May 22, 1867, relating to the duty of the company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life risks, etc., and to the amendment of April 25, 1882, section 6, which provides as follows: "It shall be the duty of said company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life risks of whatever description, other than mere accident risks and other than such contracts as it has made or may make, wherein the sum payable upon the death of the person named in any such contract is made contingent upon an assessment collected from the associated holders of such contracts," and I ask you to state whether the Hartford Life Insurance Company has written both legal reserve or level premium contracts, and whether it has written assessment contracts wherein, speaking generally, the sum payable upon the death of the holder of the contract is made contingent upon assessments collected from associated holders of such contracts? A. It has.

Q. What is the general designation that you apply to your assessment business? A. We designate our assessment business as safety fund business.

Q. What class of business did the company first begin to write, and when? A. The company first wrote legal reserve insurance, in 1867.

Q. And continued to write legal reserve insurance up to what date? A. Until the end of 1879.

Q. Did it then begin to write assessment insurance business or safety fund business? A. Yes, the first of the year 1880.

Q. At that time did it cease to write new business on the legal reserve or old line basis? A. It did.

Q. And continued only to write safety fund or assessment business? A. Yes, until 1899.

Q. In 1899 did it cease to write new business in the safety fund department? A. It did.

Q. And began the writing of what kind of business? A. Of legal reserve business.

Q. And since 1899 has it written any new business in the safety fund business? A. It has not.

Q. What is the paper which I now show you? A. It is the application of Frank Barber on which certificate 174416 was issued September 4, 1893, in the Men's Division of the Safety Fund Department of the Hartford Life Insurance Company on his life. This paper was taken from our files of original applications.

Q. Is that the only application which you have for the policy last referred to, 174416? A. It is.

The defendant offers paper last referred to in evidence, which is hereto attached and marked "Defendant's Exhibit C".

Said Exhibit "C" heretofore appears as Exhibit "A" to the answer, and is set out in full on pages 15 to 22 in this abstract.

Mr. Morrow: I object to the paper being offered in evidence for the reason it is not shown that it was signed and executed by Frank Barber.

Q. Now, at the top of upper left-hand corner of one of the pages, on one side of Exhibit "C", appears the

number 174416. Please explain that number, how it came there, when put there, and what it indicates. A. That is the number of the certificate which was issued to Frank Barber on that application. That number was put there after the receipt of the application at the home office of the company and at the time of the issue of the certificate, and corresponds to the number that was given to the certificate.

It is stipulated by and between attorneys that these copies of policies now about to be offered by the defendant may be used in this case the same as the originals, unless it shall appear that there is some difference between the copies now offered and the originals, in which event the originals shall be used and the copies shall not be offered.

Q. What is the paper I now hand you? A. It is a copy of certificate 174416, which was issued in the Men's Division of the Safety Fund Department of the Hartford Life Insurance Company to Frank Barber of St. Louis, on the 4th day of September, 1883.

Q. Was the original of that certificate issued pursuant to the application heretofore referred to and marked Exhibit "C"? A. It was.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit "E".

(Said Exhibit "E" is the original policy, which heretofore appears as Plaintiff's Exhibit 1, on page 32 of this abstract.)

Q. Attached to and being the third page of Exhibits "D" and "E", and referred to in the policy, is a copy of what is designated the "Trustee's Con-

tract", being a contract between the Hartford Life Insurance Company and the Security Company, of date December 31, 1879. Do you know whether that is or is not a copy of the Trustee's Contract of that date? A. I know that it is a correct copy of the original Trustee's Contract of that date.

Q. Was it pursuant to that Trustee's Contract of date December 31, 1879, that the Safety Fund Department of the company was begun and started? A. It was.

Q. How are the certificates, of which Exhibits "D" and "E" are copies, designated by you in the operation of the Safety Fund Department, for the purpose of differentiating them from other certificates in the Safety Fund Department? A. We designate them as the original Safety Fund certificates.

Q. Or regular Safety Fund? A. Or regular Safety Fund, yes.

Q. Now, the term, "regular Safety Fund" or "original Safety Fund" certificates includes what particular forms of policies as differentiated from other forms of policies? A. It includes all the Safety Fund certificates which had the original or lower table of rates.

Q. Endorsed on the certificates? A. Endorsed on the back of the certificates.

Q. On the back of certificates, Exhibits "D" and "E", there is a table of rates, and will you please state whether that is what you have referred to as the original table of rates? A. It is.

Q. When was it that you adopted the new or higher table of rates? A. In the year 1894.

Q. And up to 1894 were the certificates issued in the Safety Fund Department issued upon the old or

original table of rates, a copy of which is attached and is endorsed on Exhibits "D" and "E"? A. They were.

Q. What other classes or forms of policies were issued in the Safety Fund Department beside the original or regular Safety Fund certificates? A. There were several forms, designated by numbers, issued in the Men's Division of the Safety Fund Department besides the regular assessment forms—Form 3, Form 4, Form 3½.

Q. What is the paper which I now show you and which will be marked "Exhibit F"? A. It is a copy of the form on which the so-called Form 3 certificates were issued in the Men's Division of the Safety Fund Department of the Company subsequent to 1894.

Q. Such designation appearing on the bottom of the first page in the left-hand corner, "Form 3"? A. That is right.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit F".

No. .....  Age.....

The Hartford Life and Annuity Insurance Company.
Hartford, Connecticut.

Policy. Safety Fund Department.

Amount. $.....

In Consideration of the agreements and warranties made in the application herefor, does hereby insure this Certificate of Membership and Policy of Insurance to ..... (herein called the member) of ..... County

of..... State of.....
And in further consideration of an advance payment of Eight Dollars on each $1,000 of the indemnity named herein, to be made at the date hereof, and of the subsequent payments to be made as required by the fourth condition hereof, the said Company does hereby insure said member during his lifetime, subject to the following agreements:—

That ninety days from the receipt by the Company's President or Secretary of satisfactory proofs of the manner and cause of the death of the member, executed as required by the forms furnished by the Company upon notice to it of said death, together with full report of any inquest, all the conditions hereof having been conformed to—upon surrender hereof, (receipted to the Company's satisfaction), at its Home-office in Hartford, Conn., where all payments are to be made—there shall be due and payable, in lawful money of the United States, the indemnity of ..... Dollars, (less any unpaid balance of the Safety Fund mentioned in said fourth condition, and less any unpaid balance not yet due of the then current year's payments), to .....
. .....
. .....
..... legal representatives, or to such other beneficiary as the member shall from time to time designate, with the written consent of the Company;

And upon the express conditions and agreements given elsewhere hereon.

In Witness Whereof, The said Hartford Life and

Annuity Insurance Company has, by its President and Secretary, executed this contract, at Hartford, Conn., this .. day of .....one thousand eight hundred and ninety-.....

.....President.

.....Secretary.

Agents of the Company are not authorized to make any indorsements on or to vary the terms of this Certificate.

Annexed is a copy of the Application upon which this Contract is based. Particular attention is invited to it, as this Certificate is issued on the faith of the answers and agreements therein made, which if not correct render it invalid.

Express Conditions and Agreements forming Part of this Contract.

When Contract takes effect. Application made part of Contract. Who only can alter or waive conditions or bind Company. Powers of Agents defined. Limitation of action.

1. This contract shall take effect only when the herein stipulated first payment is made in cash, within the member's lifetime while in good health. The application herefor, and its verification, together with any application for reinstatement, are part of this contract. No alteration or waiver of any of the terms and conditions of said contract shall be valid unless made in writing and signed by the Company's President or Secretary. Agents are without power to bind the Company in any manner whatsoever, or to receive moneys for transmission except only that de-

livery hereof shall be a valid receipt for the hereinbefore stipulated advance payment if then actually made to an agent. No action at law nor suit in equity shall be maintainable, or recovery had hereupon, unless commenced within one year from the date of death of the member; nor shall any act, or omission to act, of the Company serve to extend this limitation of action.

Assignments, how to be made. Company not responsible for validity of Assignments.

2. This contract shall not be assigned, except with the written consent of the Company's President or Secretary, nor unless the original assignment be at once filed in Company's home-office. Nor, (except the assignee hereof shall bear to the member the relationship of wife, husband, child, parent, brother, sister, dependent friend or business partner,) shall the amount recoverable exceed the money value of the assignee's then interest as shown to exist by sworn statement rendered to the Company's satisfaction. The Company shall not be responsible for the validity of assignments.

Risks assumed and not assumed. Incontestability after three years.

3. In case of death caused by the member's own hand whether sane or insane, or caused by, or while engaged in, violation of law or service in the Army or Navy of any government, by the member, the indemnity payable shall be reduced to a sum equal to the amount actually paid to the Company hereon. After three years from date hereof, this contract shall be

inconstestable, at the maximum indemnity herein named, unless for fraud, default in payments as and when stipulated, and for understatement of age in said application; provided, however, that if the true age was within the age of sixty years at date of application, then that proportional part of the indemnity purchasable at the true age with the payments made thereon, shall be payable, and that if the true age was then more than sixty years, the indemnity payable shall be reduced to a sum equal to the amount actually paid to the Company hereon.

Payments required. Where to make Payments. Non-payment terminates liability of both member and Company.

4. On the first day of the Quarterly period (as hereinafter fixed) following the date hereof, the sum of ten dollars for each $1,000 of indemnity shall be paid to the sole use of the Safety Fund mentioned in the Trustee's contract referred to in condition 7 hereof, but the same may be paid in equal installments, on the first day of each of the first eight Quarterly periods. On the first day of March, June, September and December, in every calendar year, after date hereof, there shall be due and payable (less such semi-annual distributions as shall be made hereon of the interest and surplus from the said Safety Fund), such mortality contributions as shall be levied and called hereon upon the rating of this policy in column 1 of the table of mortality rates printed hereon, at the then respective age of the member according to the ratio which the total like rating of all policies in the same department (after

making due allowance for lapses) shall bear to the aggregate matured indemnity fixed upon by the Company to be met; and at the same time there shall be due and payable in equal installments to the Company's sole use, for dues, the sum of four dollars per annum on each $1,000 of the indemnity named herein. If any payment to be made to the Company shall not be paid to it at its home-office, on the stipulated day due, all right and liability to make payment shall end, and this contract shall cease and determine, and no person shall be entitled to damages or recovery of any moneys paid hereon. No act of leniency by the Company in respect of any payment shall serve to waive promptness of any subsequent payment on the stipulated day due.

Notices of Payment. Grace allowed. How to avoid default in Payment in case of non-receipt of notice. Conditions of Reinstatement.

5. Special notices (bearing date thirty days in advance of stipulated dates of payment) addressed to the member, or to the person designated by the member, at the last post-office address appearing on the Company's books, and mailed at Hartford post-office, postage prepaid, shall be sufficient notice of the amount of any stipulated payment, and the affidavit of the person mailing such notices shall be conclusive proof of the same having been so mailed. Four days grace after the dates fixed herein for payment is allowed, or fourteen days if the designated address is on or west of the meridian of Salt Lake, Utah, or in foreign countries other than Canada. If such special notice be not received it shall nevertheless be a con-

dition precedent to the continuance of this contract that a sum not less than the last prior payment made hereon (exclusive of any reduction by distribution from the Safety Fund) shall be paid upon the stipulated day due at the Company's home-office, and any balance due must be paid within thirty days thereafter. General notice of payments to be made on the stipulated day due is hereby given and accepted for all purposes of this contract. Any notices sent while any payment shall be past due are to be construed only as notices to make application for reinstatement of membership and shall not serve to extend the stipulated day due. Application for reinstatement, in form provided by the Company, shall accompany every tender of any past due payment, and such application and tender shall not serve to reinstate membership or continue this contract unless the Company shall evidence acceptance thereof by issuing its receipt therefor within the member's lifetime while in good health.

Payments, how applicable.

6. If any taxes shall be required by law on this policy, then the payments hereon shall be determined so as to cover the same. The mortality calls shall in nowise be chargeable for any uses or purposes other than their actual cost of collection (including said taxes), the member's proportionate share of medical examination fees and the expenses of investigation and settlement of death claims. The dues and first advance payment shall belong wholly to the Company in consideration of its assuming all other expenses.

Trustees' contract made part of contract.

7. This policy or certificate of membership is issued in a special department known as the Safety Fund Department and participates in all benefits of the Trustee's Contract which is printed hereon and referred to and made a part hereof with the same effect as if recited in full in this condition. And if any final distribution of said Safety Fund shall be ordered, as provided for therein, said distribution shall be in lieu of payment hereunder, and all liability of the Company shall cease in respect of this contract.

(Here follows a copy of the trustees' contract dated December 31, 1879, a copy of which appears as part of Plaintiff's Exhibit 1.)

Maximum and Proportionate Table of Mortality Rates for Every $1,000 of Death Loss, on Each $1,000 Indemnity Given Herein.

| Age (Nearest Birthday) | Column 1 Ascending Rates | Column 2 Level Rate | Age (Nearest Birthday) | Column 1 Ascending Rates | Column 2 Level Rate |
|---|---|---|---|---|---|
| 15 to 21 | $ .74 | $1.33 | 44 | $1.17 | $2.77 |
| 22 | .75 | 1.36 | 45 | 1.22 | 2.89 |
| 23 | .76 | 1.40 | 46 | 1.28 | 3.01 |
| 24 | .77 | 1.43 | 47 | 1.35 | 3.14 |
| 25 | .78 | 1.47 | 48 | 1.43 | 3.28 |
| 26 | .79 | 1.51 | 49 | 1.51 | 3.42 |
| 27 | .80 | 1.56 | 50 | 1.59 | 3.58 |
| 28 | .81 | 1.60 | 51 | 1.69 | 3.74 |
| 29 | .83 | 1.65 | 52 | 1.79 | 3.92 |
| 30 | .84 | 1.70 | 53 | 1.91 | 4.10 |
| 31 | .86 | 1.75 | 54 | 2.03 | 4.30 |
| 32 | .87 | 1.80 | 55 | 2.17 | 4.50 |
| 33 | .89 | 1.86 | 56 | 2.31 | 4.72 |
| 34 | .91 | 1.92 | 57 | 2.47 | 4.96 |
| 35 | .93 | 1.99 | 58 | 2.64 | 5.21 |
| 36 | .95 | 2.05 | 59 | 3.03 | 5.47 |
| 37 | .97 | 2.13 | 60 | 3.47 | |
| 38 | .99 | 2.20 | 61 | 3.94 | |
| 39 | 1.01 | 2.28 | 62 | 4.43 | |
| 40 | 1.04 | 2.37 | 63 | 4.96 | |
| 41 | 1.06 | 2.46 | 64 | 5.56 | |
| 42 | 1.09 | 2.56 | 65 and over | 6.24 | |
| 43 | 1.13 | 2.66 | | | |

Column 1 is for the purpose of ascertaining the ratio of amounts to be levied for mortality each quarter. For instance, if the whole number of claims to be met amounted to $250,000, and the aggregate of

rates on outstanding policies, per Column 1, amounted to $100,000, then the required ratio would be two and one-half times each policy's rating in Column 1.

Any policy holder, however, on any anniversary of this policy, instead of paying on rates ascending (as per Column 1) for each year of life, may, by agreement with the Company in writing, pay (on same ratio as above ascertained) upon a fixed level for life at the figure given in Column 2 at his age (nearest birthday) on the date of said anniversary.

The excess of payment made according to Column 2 over the amount that would otherwise be required by Column 1 shall be invested by the Company and used in part payment of the claims arising on policies using Column 2, in proportion to the amount so accumulated by each such policy.

Q. What is the paper I now show you? A. That is a copy of the form on which the so-called Form 4 certificates were issued in the Men's Division of the Safety Fund Department of the company subsequent to 1894.

Q. And the form number of that appears at the bottom of the first page in the left-hand corner—"Form 4 S. E. D."? A. It does.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit G".

**DEFENDANT'S EXHIBIT "G".**

No..... Age.....

The Hartford Life Insurance Company,
Hartford, Conn.

In consideration of the agreements and warranties made in the application herefor, does hereby issue this certificate of membership and policy of insurance to.....(herein called the member) of.....county of.....state of..... And in further consideration of an advance payment of.....dollars, to be made at the date hereof, and of like payments to be made on the.....day of.....in every successive year in the seven years then commencing, and of the subsequent payments to be made as required by the fourth condition hereof, the said company does hereby insure said member during his lifetime, subject to the following agreements:

That ninety days from the receipt by the company's president or secretary of satisfactory proofs of the manner and cause of the death of the member, executed as required by the forms furnished by the company upon notice to it of said death, together with full report of any inquest, all the conditions hereof having been conformed to—upon surrender hereof (receipted to the company's satisfaction), at its home office in Hartford, Conn., where all payments are to be made—there shall be due and payable, in lawful money of the United States, the indemnity of.....doilars (less any unpaid balance of the safety fund mentioned in said fourth condition, and less any unpaid balance not yet due of the then current year's payments in case the same are made payable other

than annually), to.....legal representatives, or to such other beneficiary as the member shall from time to time designate, with the written consent of the company; and upon the express conditions and agreements given elsewhere hereon.

In Witness Whereof, The said Hartford Life Insurance Company has, by its president and secretary, executed this contract, at Hartford, Conn., this..... day of.....one thousand eight hundred and ninety.

....., President.

....., Secretary.

Agents of the company are not authorized to make any indorsements on or to vary the terms of this contract.

Annexed is a copy of the application upon which this contract is based. Particular attention is invited to it, as this certificate is issued on the faith of the answers and agreements therein made, which if not correct render it invalid.

Express Conditions and Agreements Forming Part of this Contract.

1. This contract shall take effect only when the herein stipulated first payment is made in cash, within the member's lifetime while in good health. The application herefor, and its verification, together with any application for reinstatement, are part of this contract. No alteration or waiver of any of the terms and conditions of said contract shall be valid unless made in writing and signed by the company's president or secretary. Agents are without power to bind the company in any manner whatsoever, or to receive moneys for transmission except upon produc-

tion of a receipt for the same signed by the company's president or secretary. No action at law nor suit in equity shall be maintainable, or recovery had hereupon, unless commenced within one year from the date of death of the member; nor shall any act, or omission to act, of the company serve to extend this limitation of action.

2. This contract shall not be assigned, except with the written consent of the company's president or secretary, nor unless the original assignment be at once filed in company's home office. Nor (except as the assignee hereof shall bear to the member the relationship of wife, husband, child, parent, brother, sister, dependent friend or business partner), shall the amount recoverable exceed the money value of the assignee's then interest as shown to exist by sworn statement rendered to the company's satisfaction. The company shall not be responsible for the validity of assignments.

3. In case of death caused by the member's own hand whether sane or insane, or caused by, or while engaged in, violation of law or service in the Army or Navy of any government, by the member, the indemnity payable shall be reduced to a sum equal to the amount actually paid to the company hereon. After three years from date hereof, this contract shall be incontestable, at the maximum indemnity herein named, unless for fraud, default in payments as and when stipulated, and for understatement of age in said application; provided, however, that if the true age was within the age of sixty years at date of application, then that proportional part of the indemnity purchasable at the true age, with the payments made hereon, shall be payable, and that if the true

age was then more than sixty years, the indemnity payable shall be reduced to a sum equal to the amount actually paid to the company hereon.

4. The payments required under this policy for the first seven years shall be charged with two dollars annually (unless sooner commuted), for each $1,000 of insurance, payable into the safety fund referred to in condition 6 hereof, with the costs of collection, the due proportion of taxes levied hereon or in connection herewith, the expenses of investigations and adjusting death claims, first year's expenses and with dues proportioned annually at the rate of four dollars for each $1,000 of insurance—which dues shall be for the company's sole use in consideration of its paying all other expenses. From the balance of said payments, after making said charges, shall be paid the actual mortality occurring on policies written upon this form (designated herein as Form 4) during their first seven years; and any excess, as determined by the company, remaining after payment of said mortality, shall be credited as a dividend upon the eighth and following years. If any deficiency shall occur in said portion of the payments applicable to actual mortality, it shall be made up by proportionate contributions from members holding Form 4 policies in the Safety Fund Department whose seven years have not expired, as levied and called for by the Company hereon upon the basis of the rating of this policy in the company's table of mortality rates, at the then age of the member, and shall be payable at the same time and in like manner as other required payments hereon are made.

On the first day of March, June, September and December, in every calendar year, after the expiration

of the seventh policy year, there shall be due and payable (less such semi-annual distributions as shall be made hereon of the interest and surplus from the said Safety Fund and dividends from first seven years payments), such mortality contributions as shall be levied and called hereon by the company upon the rating of this policy in the company's table of mortality rates, at the then respective age of the member according to the ratio which the total like rating of all policies in the same department (after making due allowance for lapses) shall bear to the aggregate matured indemnity fixed upon by the company to be met; and at the same time there shall be due and payable the cost of collecting said contributions, the due proportion of taxes levied hereon or in connection herewith, the expenses of investigations and adjusting death claims and dues proportioned annually at the rate of four dollars for each $1,000 of insurance—which dues shall be for the company's sole use in consideration of its paying all other expenses.

If any payment to be made to the company shall not be paid to it at its home office, on the stipulated day due, all right and liability to make payment shall end, and this contract shall cease and determine, and no person shall be entitled to damages, or recovery of any moneys paid hereon. No act of leniency by the company in respect of any payment shall serve to waive promptness of any subsequent payment on the stipulated day due.

5. Special notices (bearing date thirty days in advance of stipulated dates of payment) addressed to the member, or to the person designated by the member, at the last post office address appearing on the company's books, and mailed at Hartford post office,

postage prepaid, shall be sufficient notice of the amount of any stipulated payment, and the affidavit of the person mailing such notices shall be conclusive proof of the same having been so mailed. Four days grace after the dates fixed herein for payment is allowed, or fourteen days if the designated address is on or west of the meridian of Salt Lake, Utah, or in foreign countries other than Canada. If such special notice be not received it shall nevertheless be a condition precedent to the continuance of this contract that a sum not less than the last prior payment made hereon (exclusive of any reduction by distribution from the Safety Fund) shall be paid upon the stipulated day due at the company's home office, and any balance due must be paid within thirty days thereafter. General notice of payments to be made on the stipulated day due is hereby given and accepted for all purposes of this contract. Any notices sent while any payment shall be past due are to be construed only as notices to make application for reinstatement of membership and shall not serve to extend the stipulated day due. Application for reinstatement, in form provided by the company, shall accompany every tender of any past due payment, and such application and tender shall not serve to reinstate membership or continue this contract unless the company shall evidence acceptance thereof by issuing its receipt therefor within the member's lifetime while in good health.

6. This policy or certificate of membership is issued in a special department known as the Safety Fund Department, and participates in all benefits of the Trustee's Contract which is printed hereon and referred to and made a part hereof with the same effect

as if recited in full in this condition. And if any final distribution of said Safety Fund shall be ordered, as provided for therein, said distribution shall be in lieu of payment hereunder, and all liability of the company shall cease in respect of this contract.

(Here follows a copy of the trustee's contract dated December 31, 1879, a copy of which appears as part of Plaintiff's Exhibit 1.)

Q. What is the paper which I now show you? A. That is a copy of the form on which the so-called Form 3½ certificates were issued in the Men's Division of the Safety Fund Department of the company, designated Form 3½ S. F. D. in the lower left-hand corner of the first page.

The defendant offers paper referred to in evidence, which is hereto attached and marked Defendant's Exhibit "H".

No..... Age.....

The Hartford Life Insurance Company,
Hartford, Conn.

In consideration of the agreements contained in the application herefor (hereby made a part of this contract), and of the first payment of ..... dollars on delivery hereof and of like payments on or before every ..... day of ..... in each consecutive year until twenty full annual payments have been made, does hereby promise to pay upon the death of ..... (herein called the insured), of ..... county of ..... and state of....., the sum of ..... dollars, within ninety days from the receipt by the company's president or secretary of satisfactory proofs of the manner and cause of the death

of the insured, executed and filled out as required by the forms furnished by the company upon notice to it of said death, together with full report of any inquest, and upon surrender hereof receipted to the company's satisfaction (less any unpaid balance to the Safety Fund and any balance not yet due of the then current policy year's payments, and any outstanding liens hereon), to ..... legal representatives, or to such other beneficiary as the insured shall from time to time designate, with the written consent of the company, subject to the following conditions and those succeeding the signatures hereto:

First. That this contract shall take effect only when the herein stipulated first payment is made in cash while the insured is alive and in good health, and shall continue in force (except as hereinafter provided) only by payment in cash to the company, on or before the stipulated day due, of each subsequent payment required hereby. All payments hereunder, by or to the company, shall be at its home office, in Hartford, Conn.

Second. That after twenty years from the date of said policy, if all payments required hereby have been made, the member may have indorsed upon said policy that no further premiums are payable except such payments as may be required for mortality cost and reserve fund in excess of the accumulations thereon, which payments, if any, shall be payable on notice, in cash, or in such equivalent manner as the company may direct.

Third. That upon surrender of this policy at the end of twenty years, all conditions having been fulfilled, the member may, in lieu of the option given in

the second condition hereof, receive the full amount of the unapplied accumulations in cash and discontinue the insurance.

Fourth. That after two full years' payments have been made hereon, and upon failure to make further payments as hereby required, this policy shall continue in force under the terms prescribed herein until the net balance of said policy's share of said accumulations shall be exhausted by application of the same to current mortality costs, dues as provided for in condition 5, on the second page hereof, and any unpaid balance of the required Safety Fund payment, when said policy shall finally cease and determine without notice.

Fifth. That by action of the company, in the event of the insufficiency of said net balance to maintain the necessary mortality costs and reserve fund, the said policy may be charged with the deficiency, which shall be payable on notice, in cash, or in such equivalent manner as the company may direct. The company's own apportionment of accumulation, deficiency, mortality cost and reserve fund for all purposes of this policy shall be conclusive and binding on all parties in interest.

In Witness Whereof, the said Hartford Life Insurance Company has, by its president and secretary, executed this contract, at Hartford, Conn., this ..... .... day of ..... one thousand eight hundred and ninety.....

.....*President.*

.....*Secretary.*

Form 3½, S. F. D.
(Ed. May, '97.)

*Agents of the company are not authorized to make any indorsements on or to vary the terms of this* ***certificate.***

Annexed is a copy of the application upon which this contract is based. Particular attention is invited to it, as this certificate is issued on the faith of the answers and agreements therein made, which if not correct render it invalid.

**Additional Conditions, Before Referred to, Forming Part of this Contract.**

1. That no alteration or waiver of any of the terms and conditions of this contract shall be valid unless made in writing and signed by the company's president or secretary. Agents are without power to bind the company in any manner whatsoever, or to receive moneys therefor except upon production of a receipt for the same signed by the company's president or secretary. No action at law nor suit in equity shall be maintainable, or recovery had hereupon, unless commenced within one year from the date of death of the insured; nor shall any act, or omission to act, of the company serve to extend this limitation of action.

2. That this contract shall not be assigned, except with the written consent of the company's president or secretary, nor unless the original assignment be at once filed in company's home office. Nor, (except the assignee hereof shall bear to the insured the relationship of wife, husband, child, parent, brother, sister, dependent friend or business partner,) shall the amount recoverable exceed the money value of the assignee's then interest as shown to exist by

sworn statement rendered to the company's satisfaction. The company shall not be responsible for the validity of assignments.

3. That in case of death prior to three years, and while this policy is in force, caused by the insured's own hand, whether sane or insane, or caused by, or while engaged in violation of law or service in the army or navy of any government, by the insured, the indemnity payable shall be reduced to a sum equal to the amount actually paid to the company hereon. After three years from date hereof, this contract shall be incontestable, unless for fraud, default in payments as and when stipulated, and for understatement of age in said application; provided, however, that if the true age was below the age of nearest fifty-nine years at date of application, then that proportional part of the indemnity purchasable with the payments made hereon, at the true age, shall be payable, and that if the true age was at date of application nearest or more than sixty years, the indemnity payable shall be reduced to a sum equal to the amount of payments aforesaid.

4. That general notice of payments to be made on the stipulated day due is hereby given and accepted for all purposes as sufficient and conclusive, but as a matter of courtesy, which may be discontinued at any time without notice, special notices (bearing date thirty days in advance of stipulated dates of payment) addressed to the insured, or to the person designated by the insured, at the last postoffice address appearing on the company's books, and mailed at Hartford postoffice, postage prepaid, may be given of the amount of any stipulated payment, and the affidavit of the person mailing such notices shall be

conclusive proof of the same having been so mailed. If such special notice be not received it shall nevertheless be a condition precedent to the continuance of this contract that a sum not less than the last prior payment made hereon (exclusive of any reduction by distribution from the Safety Fund) shall be paid upon the stipulated day due at the company's home office. Any notices sent while any payments shall be past due are to be construed only as notices to make application for reinstatement of the policy, and shall not serve to extend the stipulated day due. Application for reinstatement, in form provided by the company, shall accompany every tender of any past due payment, and such application and tender shall not serve to reinstate or continue this contract unless the company shall evidence acceptance thereof by issuing its receipt therefor within the insured's lifetime while in good health. No act of leniency or courtesy by the company in respect of any payment or payments, or in respect of any condition hereof or notice shall be deemed to establish a custom or course of business in modification, or waiver of any of the terms hereof.

5. The payments required under this policy shall be charged with the costs of collection, the due proportion of taxes levied hereon or in connection herewith, the expenses of investigations and adjusting death claims, first year's expenses, payment to the Safety Fund at the end of the fourth policy year of ten dollars on each $1,000 insured hereunder, if the same shall not have been advanced by the policyholder to secure early benefits from said fund, in which case this policy shall entitle its holder to two equal semi-annual dividends in its fifth policy year

that together shall amount to such advance; and with dues proportioned annually at the rate of four dollars for each $1,000 of insurance, which dues shall be for the company's sole use in consideration of its paying all other expenses. From the balance of said payments, after making said charges, shall be paid the actual current mortality occurring on policies written upon this company's Safety Fund System, and any excess as determined by the company remaining after payment of said mortality, shall be accumulated for the purposes and be used at the times and in the manner as set forth in paragraphs Second, Third, Fourth and Fifth on the preceding page hereof.

6. That this contract is issued in a special department known as the Safety Fund Department, and participates in all benefits of the Trustee's Contract which is printed hereon and referred to and made a part hereof, with the same effect as if recited in full in this condition. And if any final distribution of said Safety Fund shall be ordered, as provided for therein, said distribution and the return of this policy's share in the aforesaid accumulations shall be in lieu of payment hereunder, and all liability of the company shall cease in respect of this contract.

(Here follows a copy of the Trustees' Contract, dated December 31, 1879, a copy of which appears as part of Plaintiff's Exhibit 1.)

**Rates of Payments.**

For Form 3½ policy.

Commuted into advance payments for twenty years.
For $1,000.

| Age. | Ann. | Quar. | Age. | Ann. | Quar. |
|---|---|---|---|---|---|
| 20 | $25.98 | $6.84 | 40 | $37.69 | $ 9.92 |
| 21 | 26.38 | 6.94 | 41 | 38.60 | 10.16 |
| 22 | 26.79 | 7.05 | 42 | 39.57 | 10.41 |
| 23 | 27.21 | 7.16 | 43 | 40.60 | 10.69 |
| 24 | 27.65 | 7.28 | 44 | 41.67 | 10.97 |
| 25 | 28.11 | 7.40 | 45 | 42.81 | 11.27 |
| 26 | 28.58 | 7.52 | 46 | 44.00 | 11.58 |
| 27 | 29.07 | 7.65 | 47 | 45.25 | 11.91 |
| 28 | 29.58 | 7.79 | 48 | 46.56 | 12.25 |
| 29 | 30.11 | 7.93 | 49 | 47.95 | 12.62 |
| 30 | 30.66 | 8.07 | 50 | 49.41 | 13.00 |
| 31 | 31.23 | 8.22 | 51 | 50.95 | 13.41 |
| 32 | 31.83 | 8.38 | 52 | 52.58 | 13.84 |
| 33 | 32.45 | 8.54 | 53 | 54.31 | 14.29 |
| 34 | 33.10 | 8.71 | 54 | 56.14 | 14.78 |
| 35 | 33.77 | 8.89 | 55 | 58.09 | 15.29 |
| 36 | 34.48 | 9.08 | 56 | 60.17 | 15.84 |
| 37 | 35.22 | 9.27 | 57 | 62.38 | 16.42 |
| 38 | 36.00 | 9.48 | 58 | 64.75 | 17.04 |
| 39 | 36.82 | 9.69 | 59 | 67.29 | 17.71 |

Q. Attached to Exhibit "H", being the form 3½ certificate, is a table of rates which I have had you place on there for convenience. I will get you to state whether or not this table of rates appeared endorsed on this form of certificate. A. It did not.

Q. That is merely to indicate the rates on which

this certificate was issued? A. Yes, the rates of deposit that the members were required to pay at the attained ages shown in the table.

Q. Will you please state wherein form 3 certificate, being Exhibit "F", differed in essentials from the regular Safety Fund certificates, a copy of which is Exhibits "D" and "E"; point out in Exhibit "F" where that difference appears. A. Form 3, which is Exhibit "F", differs from the original Safety Fund certificate form only in the table of assessment rates. This table appears on the fourth page of the exhibit. Except as to the table of rates these form 3 policies were treated and are treated in all respects exactly the same as the original assessment certificates.

Q. The table endorsed on the back of Exhibit "F", being the form 3 certificate, is that the old table that was on the original or regular Safety Fund certificates, or is it the new and higher table that you have referred to? A. It is the new and higher table.

Q. And when did you first begin issuing form 3 certificates, of which Exhibit "F" is a copy? A. Eighteen hundred ninety-four.

Q. None issued prior to that time? A. None whatever.

Q. I wish you would take Exhibits "G" and "H", being respectively the form 4 and form 3½ certificates, and point out wherein they differ in essentials from the regular Safety Fund certificates. A. As far as they affect the Safety Fund Department and the original or regular assessment certificates, they differ from the original or regular assessment certificates only in that the new or higher table of rates heretofore referred to is applied to them for the purposes of assessment. The form 4 certificate for the first

seven years provided for the payment of a level premium. From these premiums there was deducted the expense dues, two dollars each year, as a deposit to the Safety Fund, and they further provided that from the balance of the payments should be paid the mortality on form 4 certificates. At the end of seven years the contract provided that these form 4 certificates should be continued in the Men's Division of the Safety Fund Department of the company by the payment of assessments. It was further provided in the contract that any balance of the payments of these members not applied to the payment of the expense dues, the Safety Fund deposits, and the mortality, should be applied in the reduction of future assessments on such policies. The form 3½ certificate, Exhibit "H", provided that the member or insured should make a fixed deposit in advance each year and that from his payments should be deducted the deposit to the Safety Fund of $10.00 on each $1,000.00 of insurance, the expense dues, and other expenses as provided therein, and that the balance of the payments should be accumulated as a fund with the payments of other form 3½ certificate holders, and from this fund should be paid the regular assessments of the Safety Fund Department; these assessments, as before stated, to be based on the new or higher table of rates. Form 3½ certificates and their effect upon the Safety Fund Department are exactly the same as the form 3 certificates.

Q. You have stated under the form 4 certificate the member was required to make certain stipulated or level premium payments for a period of seven years. What was the amount of the payments so required during this period of seven years as compared with

the amounts of assessments in the Safety Fund Department? Were they the same, or higher or lower? A. They were not the same, and though I cannot state definitely, undoubtedly they were higher at the beginning of the period of the seven years and lower at the end.

Q. Now, from the payments made by the members holding Form 4 certificate during the seven years that you have indicated, how were they assessed; now, did they enter into the Safety Fund at all? A. They entered into the Safety Fund Department only in that they made deposits to the Safety Fund, but they did not pay assessments for the mortality of the regular Safety Fund members, nor were death losses on those certificates included in any assessments upon the regular Safety Fund members during the term of seven years.

Q. But during the seven years did they pay to the Safety Fund any amount per thousand, and if so, what amount? A. They did; they paid to the Safety Fund $2.00 per annum for the term of seven years, making a total of fourteen (14) dollars as their deposit to the Safety Fund for $1,000 insurance, as compared with the $10 deposit for $1,000 of insurance of the regular Safety Fund certificate holder.

Q. From what source were the death losses on these Form 4 certificates paid which were incurred during the first seven years? A. The death losses on the Form 4 certificates were, in accordance with the terms of the contract, paid from the premiums of the Form 4 certificate holders.

Q. And not from the Mortuary Fund or other funds of the Safety Fund Department? A. Absolutely not; only from the accumulated premiums paid by the

Form 4 certificate holders during the seven-year term.

Q. Now, at the end of seven years what became of those certificates? A. By their terms they were continued in the Safety Fund Department by the payment of assessments the same as all other members of the Safety Fund Department.

Q. After seven years they were assessed and were no longer level premium policies; they were assessed as all other members of the Safety Fund Department were assessed, and at the rate shown by the new or higher table? A. That is right.

Q. Now, with respect to the deposits made in advance by the holders of Form 3½ certificates. During the first seven years from what source were the death losses of the holders of that class of policy paid during that time? A. From the Mortuary Fund of the Safety Fund Department, to which they paid assessments on their certificates; paid from their accumulated deposits.

Q. Does the table attached to Form 3½ certificate show the amount which was required quarterly or annually at the several ages therein designated from the holders of Form 3½ certificates? A. It does.

Q. State whether the first column shows the age at which the rate shown in the table of payments last referred to is applicable. A. It does.

Q. And state whether the second column is the annual rate and the third column the quarterly rate. A. That is right; it is.

Q. And then, the fourth column again shows the age and the fifth and sixth columns the annual and quarterly rates? A. That is right.

Q. And the amount of the deposits or payments

thus required at the several ages shown in that table—state whether it is the same or higher or lower than the assessments made in the Safety Fund Department at those several ages? A. It is not the same. It was considerably higher at the attained age at the date of issue than the assessment at the same age at that time. The deposits on this form 3½ certificate have always been sufficient to pay their regular assessments to the mortuary fund and the Safety Fund Department, men's division; if they were not the contract provides they should be assessed for any deficiency.

Q. Now, the amount assessed on the form 3½ certificate against the deposits which you have indicated there, was that assessed on the new or higher table or on the old table? A. On the new or higher table.

Q. As a matter of fact, has the amount which the members holding form 3½ certificates have paid to the company, been in excess of or below the amount for which these deposits have been assessed? A. It has been in excess.

Q. And that excess of their deposits over the amount which they have been assessed is referred to in your reports and statements as what? A. In our reports it is included in an item which is designated "Surplus on Stipulated Premium Policies."

Q. In describing and differentiating form 4 certificate from your regular Safety Fund certificate you have referred to the provisions of the contract which indicate such differentiation. Won't you please read into the record for convenience in future use that clause of the certificate which indicates that differentiation? A. "4. The payments required under this policy for the first seven years shall be charged with

two dollars annually (unless sooner commuted) for each one thousand dollars of insurance, payable into the Safety Fund referred to in condition 6 hereof, with the costs of collection, the due proportion of taxes levied hereon, or in connection herewith, the expenses of investigations and adjusting death claims, first year's expenses and with dues proportioned annually at the rate of four dollars for each $1,000 of insurance, which dues shall be for the company's sole use in consideration of its paying all other expenses. From the balance of said payments, after making said charges, shall be paid the actual mortality occurring on policies written upon this form (designated herein as Form 4) during their first seven years; and any excess, as determined by the company, remaining after payment of said mortality, shall be credited as a dividend upon the eighth and following years. If any deficiency shall occur in said portion of the payments applicable to actual mortality, it shall be made up by proportionate contributions from members holding Form 4 policies in the Safety Fund Department whose seven years have not expired, as levied and called for by the company hereon upon the basis of the rating of this policy in the company's table of mortality rates, at the then age of the member, and shall be payable at the same time and in like manner as other required payments hereon are made.

"On the first day of March, June, September and December, in every calendar year, after the expiration of the seventh policy year, there shall be due and payable (less such semi-annual distributions as shall be made hereon of the interest and surplus from the said Safety Fund and dividends from first seven

years' payments), such mortality contributions as shall be levied and called hereon by the company upon the rating of this policy in the company's table of mortality rates, at the then respective age of the member according to the ratio which the total like rating of all policies in the same department (after making due allowance for lapses) shall bear to the aggregate matured indemnity fixed upon by the company to be met; and at the same time there shall be due and payable the cost of collecting said contributions, the due proportion of taxes levied hereon or in connection herewith, the expenses of investigations and adjusting death claims and dues proportioned annually at the rate of four dollars for each $1,000 of insurance—which dues shall be for the company's sole use in consideration of its paying all other expenses.

"If any payment to be made to the company shall not be paid to it at its home office, on the stipulated day due, all right and liability to make payment shall end, and this contract shall cease and determine, and no person shall be entitled to damages, or recovery of any moneys paid hereon. No act of leniency by the company in respect of any payment shall serve to waive promptness of any subsequent payment on the stipulated day due." And on the first page of the contract the following: "And in further consideration of an advance payment of.....dollars to be made at the date hereof, and of like payments to be made on the .....day of.....in every successive year in the seven years then commencing, and of the subsequent payments to be made as required by the fourth condition hereof."

Q. In referring to some of these policy forms, you designate them, do you not, as seven-year certificates? A. That is right, yes; the form 4 certificates we designate as seven-year.

Q. Any other certificates included in the seven-year certificates? A. No.

Q. And why is it that your form 4 certificates are issued as seven-year certificates? A. Because the provisions contained therein provide for level premiums for the first seven years from the date of issue.

Q. Please state whether all the members holding what you have designated as regular Safety Fund certificates have on each assessment been assessed at the rates indicated by the table which you have designated the old table of rates. A. They have.

Q. And state whether the members holding form 4 and form 3½ certificates, or their deposits made pursuant to the provisions of their certificates, have been assessed always at the rate shown in the new or higher table of rates. A. They have.

Q. Is this a copy of what you have designated as the old table of rates? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit I":

**DEFENDANT'S EXHIBIT "I".**

Old Table Rate.

| Ages | Rate |
|---|---|
| 15-21 | $ .65 |
| 22 | .67 |
| 23 | .69 |
| 24 | .71 |
| 25 | .73 |
| 26 | .75 |
| 27 | .77 |
| 28 | .79 |
| 29 | .81 |
| 30 | .83 |
| 31 | .85 |
| 32 | .88 |
| 33 | .91 |
| 34 | .94 |
| 35 | .97 |
| 36 | 1.00 |
| 37 | 1.03 |
| 38 | 1.06 |
| 39 | 1.09 |
| 40 | 1.12 |
| 41 | 1.14 |
| 42 | 1.16 |
| 43 | 1.18 |
| 44 | 1.20 |
| 45 | 1.22 |
| 46 | 1.25 |
| 47 | 1.30 |
| 48 | 1.35 |
| 49 | 1.40 |

| | |
|---|---|
| 50 | 1.47 |
| 51 | 1.54 |
| 52 | 1.63 |
| 53 | 1.72 |
| 54 | 1.81 |
| 55 | 1.92 |
| 56 | 2.03 |
| 57 | 2.15 |
| 58 | 2.32 |
| 59 | 2.50 |
| 60 | 2.68 |
| 61 | 2.86 |
| 62 | 3.08 |
| 63 | 3.30 |
| 64 | 3.65 |
| 65 | 4.00 |

**DEFENDANT'S EXHIBIT "J".**

New Table Rate.

| Ages | Rate |
|---|---|
| 15-21 | $ .74 |
| 22 | .75 |
| 23 | .76 |
| 24 | .77 |
| 25 | .78 |
| 26 | .79 |
| 27 | .80 |
| 28 | .81 |
| 29 | .83 |
| 30 | .84 |
| 31 | .86 |
| 32 | .87 |
| 33 | .89 |
| 34 | .91 |
| 35 | .93 |

| | |
|---|---|
| 36..... | .95 |
| 37..... | .97 |
| 38..... | .99 |
| 39..... | 1.01 |
| 40..... | 1.04 |
| 41..... | 1.06 |
| 42..... | 1.09 |
| 43..... | 1.13 |
| 44..... | 1.17 |
| 45..... | 1.22 |
| 46..... | 1.28 |
| 47..... | 1.35 |
| 48..... | 1.43 |
| 49..... | 1.51 |
| 50..... | 1.59 |
| 51..... | 1.69 |
| 52..... | 1.79 |
| 53..... | 1.91 |
| 54..... | 2.03 |
| 55..... | 2.17 |
| 56..... | 2.31 |
| 57..... | 2.47 |
| 58..... | 2.64 |
| 59..... | 3.03 |
| 60..... | 3.47 |
| 61..... | 3.94 |
| 62..... | 4.43 |
| 63..... | 4.96 |
| 64..... | 5.56 |
| 65..... | 6.24 |

Q. Is that a copy of what you have designated as the new table of rates? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit J":

Q. Please state whether the paper which I now hand you is a copy of the record of the company, consisting of the tabulation or calculation of Call 126 as levied against the Safety Fund members in the Men's Division. A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit K".

**DEFENDANT'S EXHIBIT "K".**

(Page 1.)

Regular Safety Fund Policies.

Men's Division—Calculation of Call No. 126.

| Age | Rate | Amount | Product |
|---|---|---|---|
| 30 | .83 | ..... | ..... |
| 1 | .85 | ..... | ..... |
| 2 | .88 | 1,000 | .88 |
| 3 | .91 | 2,000 | 1.82 |
| 4 | .94 | 5,000 | 4.70 |
| 5 | .97 | 5,000 | 4.85 |
| 6 | 1.00 | 25,000 | 25.00 |
| 7 | 1.03 | 25,500 | 26.27 |
| 8 | 1.06 | 46,000 | 48.76 |
| 9 | 1.09 | 66,500 | 72.49 |
| 40 | 1.12 | 66,000 | 73.92 |
| 1 | 1.14 | 97,500 | 111.15 |
| 2 | 1.16 | 135,500 | 157.18 |
| 3 | 1.18 | 133,500 | 157.53 |
| 4 | 1.20 | 166,000 | 199.20 |
| 5 | 1.22 | 232,000 | 283.04 |

| | | | |
|---|---|---|---|
| 6 | 1.25 | 310,000 | 387.50 |
| 7 | 1.30 | 348,000 | 452.40 |
| 8 | 1.35 | 462,500 | 624.38 |
| 9 | 1.40 | 466,000 | 652.40 |
| 50 | 1.47 | 531,000 | 780.57 |
| 1 | 1.54 | 719,000 | 1,107.26 |
| 2 | 1.63 | 745,000 | 1,214.35 |
| 3 | 1.72 | 669,500 | 1,151.54 |
| 4 | 1.81 | 799,000 | 1,446.19 |
| 5 | 1.92 | 891,500 | 1,711.68 |
| 6 | 2.03 | 871,500 | 1,769.15 |
| 7 | 2.15 | 929,000 | 1,997.35 |
| 8 | 2.32 | 969,500 | 2,249.24 |
| 9 | 2.50 | 1,009,500 | 2,523.75 |
| 60 | 2.68 | 945,000 | 2,532.60 |
| 1 | 2.86 | 952,600 | 2,724.44 |
| 2 | 3.08 | 889,500 | 2,739.66 |
| 3 | 3.30 | 775,500 | 2,559.15 |
| 4 | 3.65 | 853,500 | 3,115.28 |
| 5 | 4.00 | 839,500 | 3,358.00 |
| 6 | 4.00 | 777,500 | 3,000.00 |
| 7 | 4.00 | 665,000 | 2,660.00 |
| 8 | 4.00 | 816,500 | 3,266.00 |
| 9 | 4.00 | 690,600 | 2,762.40 |
| 70 | 4.00 | 553,500 | 2,214.00 |
| 1 | 4.00 | 574,000 | 2,296.00 |
| 2 | 4.00 | 463,500 | 1,854.00 |
| 3 | 4.00 | 554,000 | 2,216.00 |
| 4 | 4.00 | 467,500 | 1,870.00 |
| 5 | 4.00 | 437,500 | 1,750.00 |
| 6 | 4.00 | 371,500 | 1,486.00 |
| 7 | 4.00 | 368,000 | 1,472.00 |
| 8 | 4.00 | 249,500 | 998.00 |
| 9 | 4.00 | 306,000 | 1,224.00 |
| 80 | 4.00 | 193,000 | 772.00 |

| | | | |
|---|---|---|---|
| 1 | 4.00 | 156,500 | 626.00 |
| 2 | 4.00 | 116,000 | 464.00 |
| 3 | 4.00 | 83,000 | 332.00 |
| 4 | 4.00 | 61,000 | 244.00 |
| 5 | 4.00 | 51,000 | 204.00 |
| 6 | 4.00 | 20,000 | 80.00 |
| 7 | 4.00 | 12,000 | 48.00 |
| 8 | 4.00 | 9,000 | 36.00 |
| 9 | 4.00 | 2,000 | 8.00 |
| 90 | 4.00 | 3,000 | 12.00 |
| 96 | .... | ..... | ..... |
| | | 23,984,200 | 68,158.02 |

(Page 2.)

Form 3, Men's Division.

| Age | Rate | Amount | Product |
|---|---|---|---|
| 30 | .84 | ..... | ..... |
| 1 | .86 | ..... | ..... |
| 2 | .87 | ..... | ..... |
| 3 | .89 | 3,000 | 2.67 |
| 4 | .91 | 2,000 | 1.82 |
| 5 | .93 | 1,000 | .93 |
| 6 | .95 | 2,000 | 1.90 |
| 7 | .97 | 3,000 | 2.91 |
| 8 | .99 | 5,000 | 4.95 |
| 9 | 1.01 | 7,000 | 7.07 |
| 40 | 1.04 | 2,000 | 2.08 |
| 1 | 1.06 | 8,000 | 8.48 |
| 2 | 1.09 | 17,000 | 18.53 |
| 3 | 1.13 | 6,000 | 6.78 |
| 4 | 1.17 | 6,000 | 7.12 |
| 5 | 1.22 | 8,000 | 9.76 |
| 6 | 1.28 | 8,000 | 10.24 |
| 7 | 1.35 | 8,000 | 10.80 |

| | | | |
|---|---|---|---|
| 8 | 1.43 | 14,000 | 20.02 |
| 9 | 1.51 | 20,500 | 30.96 |
| 50 | 1.59 | 12,000 | 19.08 |
| 1 | 1.69 | 14,500 | 24.51 |
| 2 | 1.79 | 15,000 | 26.85 |
| 3 | 1.91 | 21,500 | 41.07 |
| 4 | 2.03 | 6,000 | 12.18 |
| 5 | 2.17 | 12,000 | 26.04 |
| 6 | 2.31 | 11,500 | 26.57 |
| 7 | 2.47 | 16,500 | 40.76 |
| 8 | 2.64 | 13,000 | 34.32 |
| 9 | 3.03 | 25,000 | 75.75 |
| 60 | 3.47 | 8,000 | 27.76 |
| 1 | 3.94 | 11,000 | 43.34 |
| 2 | 4.43 | 24,500 | 108.54 |
| 3 | 4.96 | 11,000 | 54.56 |
| 4 | 5.56 | 15,500 | 86.18 |
| 5 | 6.24 | 10,000 | 62.40 |
| 6 | 6.24 | 6,000 | 37.44 |
| 7 | 6.24 | 6,000 | 37.44 |
| 8 | 6.24 | 9,000 | 56.16 |
| 9 | 6.24 | 6,000 | 37.44 |
| 70 | 6.24 | 4,000 | 24.96 |
| 1 | 6.24 | 2,000 | 12.48 |
| 2 | 6.24 | 5,000 | 31.20 |
| 3 | .... | ..... | ..... |
| 4 | 6.24 | 3,000 | 18.72 |
| 5 | .... | ..... | ..... |
| 6 | .... | ..... | ..... |
| 7 | .... | ..... | ..... |
| 8 | .... | ..... | ..... |
| 9 | .... | ..... | ..... |
| 80 | .... | ..... | ..... |
| | | 388,500 | 1,112.77 |

(Page 3.)

Form 4. Men's Division.

| Age | Rate | Amount | Product |
|---|---|---|---|
| 30 | .84 | ..... | ..... |
| 1 | .86 | 1,000 | .86 |
| 2 | .87 | 7,500 | 6.53 |
| 3 | .89 | 11,500 | 10.24 |
| 4 | .91 | 16,000 | 14.56 |
| 5 | .93 | 23,000 | 21.39 |
| 6 | .95 | 17,000 | 16.15 |
| 7 | .97 | 28,500 | 27.65 |
| 8 | .99 | 50,000 | 49.50 |
| 9 | 1.01 | 45,500 | 45.96 |
| 40 | 1.04 | 64,000 | 66.56 |
| 1 | 1.06 | 60,500 | 64.13 |
| 2 | 1.09 | 99,000 | 107.91 |
| 3 | 1.13 | 91,500 | 103.40 |
| 4 | 1.17 | 111,500 | 130.46 |
| 5 | 1.22 | 102,500 | 125.05 |
| 6 | 1.28 | 123,000 | 157.44 |
| 7 | 1.35 | 115,000 | 155.25 |
| 8 | 1.43 | 130,000 | 185.90 |
| 9 | 1.51 | 138,500 | 209.14 |
| 50 | 1.59 | 154,500 | 245.66 |
| 1 | 1.69 | 180,500 | 305.05 |
| 2 | 1.79 | 212,000 | 379.48 |
| 3 | 1.91 | 164,000 | 313.24 |
| 4 | 2.03 | 236,750 | 480.60 |
| 5 | 2.17 | 137,500 | 298.38 |
| 6 | 2.31 | 121,000 | 279.51 |
| 7 | 2.47 | 161,000 | 397.67 |
| 8 | 2.64 | 157,500 | 415.80 |
| 9 | 3.03 | 140,500 | 425.72 |

| | | | |
|---|---|---|---|
| 60 | 3.47 | 126,500 | 438.96 |
| 1 | 3.94 | 120,500 | 474.77 |
| 2 | 4.43 | 109,500 | 485.09 |
| 3 | 4.96 | 65,500 | 324.88 |
| 4 | 5.56 | 109,000 | 606.04 |
| 5 | 6.24 | 75,000 | 468.00 |
| 6 | 6.24 | 58,000 | 361.92 |
| 7 | 6.24 | 48,750 | 304.20 |
| 8 | 6.24 | 32,500 | 202.80 |
| 9 | 6.24 | 35,500 | 221.52 |
| 70 | 6.24 | 21,000 | 131.04 |
| 1 | 6.24 | 26,500 | 165.36 |
| 2 | 6.24 | 14,500 | 90.48 |
| 3 | 6.24 | 7,000 | 43.68 |
| 4 | 6.24 | 5,000 | 31.20 |
| 5 | 6.24 | 2,000 | 12.48 |
| 6 | .... | ..... | ..... |
| 7 | .... | ..... | ..... |
| 8 | .... | ..... | ..... |
| 9 | .... | ..... | ..... |
| 80 | .... | ..... | ..... |
| | | 3,757,500 | 9,401.61 |

(Page 4.)

Form 3½. Men's Division.

| Age | Rate | Amount | Product |
|---|---|---|---|
| 30 | .84 | ..... | ..... |
| 1 | .86 | ..... | ..... |
| 2 | .87 | 1,000 | .87 |
| 3 | .89 | ..... | ..... |
| 4 | .91 | 3,000 | 2.73 |
| 5 | .93 | 3,000 | 2.79 |

| | | | |
|---|---|---|---|
| 6 | .95 | 3,000 | 2.85 |
| 7 | .97 | 1,000 | .97 |
| 8 | .99 | 1,000 | .99 |
| 9 | 1.01 | 1,000 | 1.01 |
| 40 | 1.04 | ..... | ..... |
| 1 | 1.06 | 1,000 | 1.06 |
| 2 | 1.09 | 1,000 | 1.09 |
| 3 | 1.12 | ..... | ..... |
| 4 | 1.17 | 2,000 | 2.34 |
| 5 | 1.22 | ..... | ..... |
| 6 | 1.28 | 2,000 | 2.56 |
| 7 | 1.35 | 3,000 | 4.05 |
| 8 | 1.43 | ..... | ..... |
| 9 | 1.51 | 1,000 | 1.51 |
| 50 | 1.59 | 1,000 | 1.59 |
| 1 | 1.69 | ..... | ..... |
| 2 | 1.79 | 2,000 | 3.58 |
| 3 | 1.91 | ..... | ..... |
| 4 | 2.03 | ..... | ..... |
| 5 | 2.17 | ..... | ..... |
| 6 | 2.31 | ..... | ..... |
| 7 | 2.47 | ..... | ..... |
| 8 | 2.64 | ..... | ..... |
| 9 | 3.03 | 1,000 | 3.03 |
| | | 27,000 | 33.02 |

| | | |
|---|---|---|
| Assessment | | $68,158.02 |
| Form 3 | | 1,112.77 |
| Form 4 | | 9,401.61 |
| Form 3½ | | 33.02 |
| Total | | $78,705.42 |
| Terminated | 2.47% | 1,944.02 |
| Product | | $76,761.40 |
| Amount | $322,378.48 | |
| Ratio | | 4.20 |

Mr. Morrow: I object to this for the reason that it is not the best evidence; that the original record is the best evidence, and alleged copies is incompetent, and it is now in the possession of the defendant.

Mr. Haid: All these exhibits are based on the record that is made. This defendant was present, Mr. Morrow was present, and saw the original and made no objections to it and filed no motion as provided by the statutes, at which time the witness was present and he had an opportunity to cross-examine him and could see the condition of the original exhibit, and it is part of the record that is made in this case.

Mr. Morrow: I didn't make any objections here on this deposition because I didn't have to. The law is that with the original in possession of the defendant, it must be produced, and this is simply secondary evidence.

The Court: What about that stipulation?

Mr. Morrow: The stipulation to be offered here in the trial.

Mr. Haid: It don't say offered at the trial.

Mr. Morrow: But that is what it means.

Objection overruled; plaintiff excepted at the time.

This exhibit, Mr. Lawrence, consists of four pages, and the figures appearing on page 1 of Exhibit "K" correspond with the figures appearing on page 1 of the record which you now have before you, should they not? A. They do.

Q. What is the first column? A. The first column shows the ages at which there are members living whose certificates are in force in the Safety Fund Department.

Q. And the second column shows what? A. The second column is the table of rates for the attained ages.

Q. And the third column shows what? A. The third column shows the amounts of insurance in force at the various ages.

Q. And the fourth column shows what? A. The fourth column shows the product resulting from multiplying the table rate at the corresponding age by the number of thousand of insurance outstanding at that age.

Q. On what call? A. On Call 126.

Q. On this first page I see that opposite the ages 30 and 31 you have the rate .83 and .85, but under the word "Amount", meaning, as you have testified, the amount of insurance in force, there is nothing enumerated. Why is nothing enumerated in that column opposite ages 30 and 31? A. Because on De-

cember 21st, 1909, the date with which that record deals, there was no insurance in force at those two ages.

Q. And at ages 32, following the rate .88 you have inserted the amount 1,000, which indicates what with regard to the amount of insurance in force? A. It indicates that on December 31st, 1909, there was $1,000 of insurance in force on a member whose attained age was 32 years.

Q. And so on throughout the exhibit, wherever there is any amount inserted opposite a particular age that indicates the amount of insurance in force at that age on that date? A. It does.

Q. And with respect to age 32 you would take the rate .88 and multiply by 1,000, which gives the product in the last column, which is .88 multiplied by 1, or .88, and it gives you the amount to be realized from an assessment of one table rate on a member of that age? A. Yes, and it also gives the amount realized by the assessment of one table rate upon the amount of insurance outstanding at that time at that age.

Q. So when we get to age 50, where the rate is 1.47, the figures 531,000 indicate the amount of insurance at that age, and the result or product, 780.57, is the result of multiplying 531,000 by 1.47? A. That is right.

Q. The rate 1.47 being the rate by the table at age 50 for each $1,000 of insurance? A. That is right.

Q. Now, page 2 of Exhibit "K" is a copy of page 2 of the record which is now before you, is it not? A. It is.

Q. The total of the products of the calculation as shown on page 1 of Exhibit "K", being the fourth

column of the first page, is 68,158.02 and is the sum of the assessment of one rate against all of the insurance in force on December 31st, 1909, in the Safety Fund Department, Men's Division, holding regular safety fund policies, is it not? A. Yes, it is the amount which would be raised by the assessments of one table rate upon all of the members whose certificates are in force in the Men's Division of the Safety Fund Department holding the original or regular Safety Fund certificates, of one table rate at their attained ages.

Q. Now, is page 2 of Exhibit "K" a copy of the same way of page 2 of the record which you now have before you? A. Yes.

Q. And the first column of page 2 of Exhibit "K" likewise refers to ages, the second column to the rate which is applicable to those ages, the third column to the amount of insurance in force, and the fourth column is the result of multiplying the amount of insurance in force per thousand by the rate per thousand given in the second column? A. Yes, that is true; this page refers especially to the form 3 policy.

Q. And why is it that you calculate the amount which would be assessed on the form 3 certificates in a different calculation from the amount that would be assessed on the holders of regular Safety Fund certificates? A. Because of the fact that we assessed on a different table of rates, being the new or higher table, heretofore referred to.

Q. Whereas, the rates shown on the first page against the regular Safety Fund certificates was at the lower or older rates? A. That is right.

Q. And the sum of the products of the fourth column, to wit, 1,112.77, is the aggregate of an assess-

ment of one rate by the higher table, against the member of the Safety Fund Department holding form 3 certificates, whose insurance was in force on December 31st, 1909; is that correct? A. At their attained ages, yes.

Q. Page 3 of Exhibit "K" is likewise a copy of page 3 of the record which is now before you; is that correct? A. It is.

Q. Made up in the same manner? A. Made up in the same manner and showing the form 4 policies.

Q. And in the same way column 3 of page 4 shows the amount of insurance in force December 31, 1909, in the Safety Fund Department where the members hold the form 4 certificates? A. That is right.

Q. And the sum of the products, being the total of the fourth column, shows the amount that would be realized from an assessment of one rate against the member in the Safety Fund Department who held form 4 certificates on that date, at their attained ages? A. Yes.

Q. And page 4 of Exhibit "K" is likewise a copy of page 4 of the record which is now before you? A. It is.

Q. And the total of column 3 shows the amount of insurance in force in the Safety Fund Department of the Men's Division of those holding form 3½ certificates on December 31st, 1909, does it not? A. It does.

Q. And the sum of the products shown on that fourth page of Exhibit "K", to wit, 3.02, shows the total amount that would be levied as the assessment of one rate against the members holding form 3½ certificates at their attained ages? A. Yes.

Q. In making this calculation on page 1, which relates to the regular Safety Fund members, you

have used opposite each age the rate shown by what table of rates? A. The rates shown in the original or lower table of rates.

Q. And in the calculations as shown on pages 3, 4 and 5 you have used the rates shown in what table of rates? A. The new, or higher table of rates.

Q. And now at the bottom of page 4 are figures which sum up the total shown on pages 1, 2, 3 and 4, to wit, the figures 68,158.02, appearing on page 1 of the exhibit; 1,112.77, which is the total which appears on page 2 of the exhibit; 9,401.61, which is the total which appears on page 3 of the exhibit, and 33.02, which is the total which appears on page 4 of the exhibit, and the aggregate of this total makes an aggregate total of 78,705.42, and what is that amount which you have designated there oposite the word "total"? A. That is the amount that would be raised by an assessment of one rate on all of the certificates in force in the Men's Division of the Safety Fund Department December 31st, 1909, at their attained ages, applying to the certificates the tables applicable thereto.

Q. Beneath the figures "78,705.42" appears this line, "Terminated, 2.47%, 1,944.02" immediately under and deducted from the total of 78,705.42. What does that indicate and pursuant to what provision of the policies sued on was that deduction made? A. That is the allowance for discontinuance of membership or lapse. The contract provides on the first page as follows: "And of the further payment of all mortality calls proportioned to the said indemnity, levied against the herein named member to form a Mortuary Fund for the payment of all indemnity matured by deaths of members, and to create

a Safety Fund as hereinafter described, which mortality calls, to be levied upon all the members in the department wherein this certificate is issued whose certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity at the dates of such deaths, with due allowance for discontinuance of membership". By this clause of the contract the Company is required to make an allowance for discontinuance of membership and the officers of the Company in calculating the assessment No. 126 estimated that the lapse or discontinuance of membership rate would be 2.47 per cent; therefore, the amount that would be raised by the assessment of one rate upon all the members in force at their attained ages was reduced by 2.47 per cent of that amount, leaving a balance of $76,761.40.

Q. What is the aggregate of an assessment of one rate against all of the members according to the table of rates applicable to their policies, reduced by an assumption of lapse equal to 2.47 per cent of the entire membership? A. That is right.

Q. Why is it essential, regardless of the terms of the contract, to assume a lapse or discontinuance of membership? A. Because on every call there are always lapses, and if we made our calculations without taking that into account we would not raise the amount for which we assess, which is the amount necessary to pay the death losses and is the amount of the death losses incurred.

Q. By lapse you mean persons who terminate the insurance or membership? A. Either by death or

lapse. It is a rate of termination, all terminations are included.

Q. Includes all terminations whether resulting from death or failure to pay assessments? A. Yes.

Q. Your assessment of mortality call 126 was based upon an aggregate of how many deaths, and by how many deaths, I mean how many insurance? A. Three hundred twenty-two thousand three hundred seventy-eight dollars and forty-eight cents.

Q. And by that assessment you undertook to raise how much money? A. Three hundred twenty-two thousand three hundred seventy-eight dollars and forty-eight cents.

Q. An assessment of one rate, as you have heretofore described, assuming the rate of lapse at 2.47 per cent on all of the members of the Men's Division of the Safety Fund Department, would realize, as you have testified, $76,761.40. Now, how many times was it necessary to multiply the net amount of an assessment of one rate, to wit, $76,761.40, in order to realize, if paid, the sum of $322,378.48? A. Four and twenty-hundredths times, which is found by dividing $322,378.48, the amount to be raised, by $76,761.40, the amount that would be raised by the assessment of one table rate, making due allowance for discontinuance of membership.

Q. And $76,761.40 divided into $322,378.48 gives you a product of 4.20, does it not? A. Approximately, yes.

Q. Well, what is the exact result of such division? A. The exact result is 4.1997.

Q. And the product you have designated on the tabulation before you as the ratio, have you not? A. I have

Q. And that means what with regard to the assessment of the members of that class? A. That means that each member must pay 4.20 times his table rate, at his attained age, per $1,000 of insurance, to pay his share of that assessment.

Q. And was each member of the Men's Division of the Safety Fund Department assessed 4.20 times one rate as shown by his assessment, at his attained age, on call 126? A. He was.

Q. Now, you have stated that the lapse rate allowed, being the lapse rate for assumed discontinuance of membership, was 2.47 per cent; that was the lapse rate which was assumed for the purpose of this assessment by you and your associate officers levying the assessment? A. It was.

Q. Do you know what the actual lapse rate was on the previous call, 125? A. Yes. It was 2.47 per cent.

Q. That is to say, 2.47 of your membership actually terminated their insurance in the Safety Fund Department, Men's Division, on call 125? A. That is right.

Q. So, in assuming what the lapse rate would be on call 126 you took what was the actual lapse rate on call 125? A. That is right.

Q. The tabulation, concerning which you have testified, being Exhibit "K", was made up on the data or condition of the Safety Fund Department as of what date? A. As of December 31st, 1909.

Q. What was the date of call 126? A. It was due on March 1st, 1910. It was levied and notices were dated January 29, 1910.

Q. And notices were sent to members on what date? A. On January 29, 1910.

Q. Why was it that you made up your assessment

of Mortality Call 126 on the condition of the Company as it existed December 31st, 1909, when the date of the call 126 was January 29th, or 29 days later? A. Because it requires that length of time to calculate the assessment, to lay the assessment, as we call it, against each individual member; that is, to calculate each individual member's assessment on the certificate registers and to prepare the notices of the assessment which are to be sent to each individual member. We start to calculate the call which is made up as of January 29th, and will be due March 1st, 30 days later than it is dated, immediately after the 31st of December, and therefore must calculate it as of conditions of that date.

Q. The amount of insurance in force at the different ages in the Safety Fund Department, and among the holders of the different forms of certificate in that department, varies with each assessment call, does it not? A. It does.

Q. And consequently you have got to calculate anew on each call the amount of insurance in force at each age? A. We do.

Q. And you do it by what process? How do you arrive at the amount of insurance in force at any particular time? A. We have the insurance in force listed at the various attained ages, as shown in Exhibit "K", and the lapses at each age on each call are deducted from the amounts of insurance at those ages, and the amount left in force at each age is extended, showing the amount that is in force at the time of the next call, and so make our calculations.

Q. Then, having ascertained the amount of insur-

ance in force at each age, you proceed with the calculation as shown by Exhibit "K"? A. Yes.

Q. And then when that is done and you have worked out the calculations shown at the end of page 4 of Exhibit "K", you then have to do what in respect to notifying the members as to the actual amount of their assessment? A. We first have to find how much each member will pay, by multiplying the rate at his attained age and number of 1,000 insurance by the ratio, and having found that, that amount is entered on the notice, as well as the dues and any other payments that he has to make.

Q. And is a separate notice prepared for each member? A. Yes; for each member.

Q. And how many members had you in this department in January, 1910, approximately? A. About 11,000, I should say.

Q. And is the record kept of the amount of each assessment as against each member, and does that record have to be made up between the time that you start the calculation, January 1st, 1910, and January 29th, when the notice goes out? A. Yes.

Q. And the notice to each member has to be made up at the same time and addressed and stamped and put in post office? A. Yes.

Q. And that process of calculating and preparing the notice of the assessment and mailing takes up approximately how much time? A. Approximately one month.

Q. How often and as of what dates are assessments levied in the association of the Safety Fund Department? A. They are levied quarterly and are due the first days of the month of March, June, September

and December and the notices are mailed thirty days prior to those dates.

Q. Will you please state the amount of death claims incurred of which you had received notice of death which had not previously been assessed for on December 31st, 1909? A. Four hundred sixty-three thousand five hundred dollars.

Q. What were your death losses in January, 1910? A. One hundred twenty thousand dollars.

Q. And what had been your average monthly death losses during 1909? A. One hundred thousand to one hundred fifteen thousand dollars.

Q. And what were they during 1910? A. About the same, I think. I think during 1910 they were more than they were during 1909.

Q. For those death losses you determined on Call 126 to assess for a total of $322,378.38. A. We did.

Q. And call 126 was based upon the aggregate of death losses? A. It was.

Q. Now, then, will you please explain how you apportioned to Frank Barber his part of this call 126, or his proportion of the total then assessed for—first, with respect to policy 128293 for $1,000, and, next, with respect to policy 174416 for $2,000? A. The amount of the assessment on certificate 128293, dated March 1st, 1910, on the life of Frank Barber, was computed by multiplying the rate at his attained age, as illustrated in the table on the back of the certificate, by the ratio 4.20. The certificate was issued the 14th day of February, 1888, at which time the age of his last birthday was 32, which was his insuring age; therefore, at the computation of call 126 the attained age was 54 years. On the table on the back of the certificate the rate given for age 54 is 2.31.

In consideration clause on the first page of the certificate is the following, in parentheses: "One-third of the proceeds of such mortality calls to be applied towards said Safety Fund until the sum of ten dollars on each $1,000 indemnity aforesaid shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon." On certificate 128293 Frank Barber completed his Safety Fund deposit on the 30th day of November, 1891, therefore in computing the assessment against this certificate on the call due March 1st, 1910, the table rate at age 51, 2.31, is reduced one-third, or we take two-thirds of 2.31, which is 1.54. Multiplying this by the ratio, which is 4.20, we get the result of 6.47, the amount of the assessment for mortality against this certificate on the call due March 1, 1910.

Q. Being the rate for $1,000 insurance? A. Being the rate for $1,000 insurance, which is the amount of certificate 128293. The assessment due March 1st on certificate 174416 on the life of Frank Barber was computed in the same manner, except that the certificate being for $2,000, the rate of 1.54 is multipdied by 2, giving 3.08 as the rate on $2,000 of insurance; this multipdied by the ratio 4.20 gives the amount of the assessment for mortality on this certificate of $12.94.

Q. Then this rate of 2.31 you divide by 3 because of that provision of the policy found on the first page which recites that after he has completed his payments to the Safety Fund he shall only be assessed at two-thirds of the rate given in the table endorsed on the policy? A. That is right; of $10.00 per thousand.

Q. And when did Frank Barber complete his payments to the Safety Fund on each of these policies? A. On No. 128293 he completed it on the 30th day of November, 1891; on certificate 174416, he completed it on the 2d day of September, 1895.

Q. And two-thirds of the table rate shown for age 51 on the back of policy makes a rate of 1.54. A. It does.

Q. And that you multiply by the ratio of 4.20, which is the ascertained ratio, being the last figure on the bottom of Exhibit "K"? A. That is right.

Q. Which gives you a total per thousand of 6.47 for mortuary purposes? A. That is right.

Q. That is the rate which you assessed on certificate 128293, because that certificate was for the sum of $1,000 only? A. That is right.

Q. And you assessed twice that amount for mortality purposes on certificate 174416, because that certificate was for $2,000? A. Yes; we assessed at twice the table rate of 1.54.

Q. The rates in the table being the rates for $1,000 of insurance? A. That is right.

Q. Now, was notice of this mortality call 126 sent to Frank Barber on January 29, 1909? A. It was.

Q. Was that notice partly in print and partly in writing? A. It was.

Q. And was the printed part of the notice sent to each member of the Safety Fund Department the same? A. It was.

Q. And is the paper which I now show you, and which I will have marked Exhibit "L", that part of the notice which is in print and not in writing, a copy of the notice which was sent to all of the

members in so far as the notice consisted only of printed matter? A. It is.

Q. And with respect to each member, what was inserted in each notice in writing? A. The name of the member, the address, street, city and state, the amount of the tax which the company would be required to pay by the laws of the state in which the member lived, if the assessment was paid, the number of the certificate, the amount of insurance, the amount assessed for mortality, the amount of quarterly dues, the total of the dues, the dividend credit and the amount that the member will be required to pay after deducting the dividend.

Q. What was the address of Frank Barber, as it appeared on the books of your company at the time that mortuary call was sent out on January 29th, 1910?

Mr. Morrow: I object to that as hearsay, and not the best evidence. We object to the question, further, that the record itself is the best evidence, and that this witness cannot state orally what the record shows.

The Court: If you have a record here, or a copy of it, why show it.

Mr. Haid: We will offer that later.

The Court: Well, just skip that question then and go ahead.

A. Forty two hundred and one Pleasant street.

Q. What city and state?

Mr. Morrow: I object to that as hearsay and not the best evidence. The records are the best evidence.

Objection overruled; plaintiff excepts.

Mr. Morrow: I make the same objection, because the record itself will show.

Mr. Haid: I am sorry the gentleman is so technical, because the whole policy shows these things.

Mr. Jones: Let the record show that we served notice on plaintiff's counsel to produce both the original and second notice of call No. 126.

A. St. Louis, Mo.

Q. Is this a copy of the notice of date January 29, 1910, which has on the margin of it "Special notice of quarterly call No. 126", which was sent to Frank Barber on January 29, 1910?

Mr. Morrow: I object to that for the reason that the original is the best evidence and that the copy is secondary and incompetent.

Objection overruled; plaintiff excepts.

A. It is.

Q. How was it sent? A. In an envelope with a list of the deaths which were included in call 126, a return envelope addressed to the Hartford Life Insurance Company, another envelope addressed to Frank Barber at 4201 Pleasant street, St. Louis, Mo., in which the receipt was to be mailed him if he made the payment, and a 2-cent stamp placed on the envelope in which the papers were placed.

Q. Then what was done? A. It was taken to the post office, Hartford, Connecticut, and mailed on the 29th day of January, 1910.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit L".

The plaintiff objects to the offering of this paper in evidence, because it is a copy of an original paper not produced nor accounted for, and

that is the best evidence. Objection overruled; plaintiff excepts.

Said exhibit is as follows:

**DEFENDANT'S EXHIBIT "L".**

Hartford Life Insurance Company,

Hartford, Conn. January 29th, 1910.

07

Frank Barber,
4201 Pleasant St.,
St. Louis, Mo.

128293

This Call which will be due Mar. 1st, 1910, is made to meet 119 Deaths (as shown by accompanying list), Benefits, $322,378.48 and expenses on your policy, as follows:

For Mortality Call.....$6.54
For Quarterly Dues to June next..... .75

$7.29

Credit, - $.....

Dividend to be applied if payment be made.... .70

Amount Due .....$6.59

Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or be-

fore the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to Hartford Life Insurance Company.

Make all remittances by Draft, Check, P. O. or Express Money Order when possible. Letters containing currency must be registered.

Special Notice of Quarterly Call No. 126. Your next Quarterly Call will fall due and be payable June 1, 1910.

See over for Special Notice.

**Special Notice.**

If the payment of the above Quarterly Call is not received at this office on or before *Mar. 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policyholder by registered letter, giving until *Mar. 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Mar. 5, 1910, will be obliged to pay this fifty-cent fee in order to have the policy unconditionally reinstated.

After *Mar. 20, 1910, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of reinstatement.

*If residence is on or west of the meridian of Salt Lake, Utah, ten days additional time is allowed.

Q. You have testified that the amount of call 126 apportioned to Frank L. Barber and chargeable

against him per thousand of insurance for mortality purposes was $6.47. In the notice, Exhibit "L", the amount demanded of him for mortality purposes on call 126 is $6.54, being a difference of seven cents, and at the top of the notice are the figures "07". Will you explain the significance of the figures 07 and the difference between the amount $6.54 as contained in the notice and $6.47 which you say was assessed against him for mortality purposes? A. The statutes of the State of Missouri require that we would pay a tax of seven cents if that assessment was paid. The amount of seven cents, therefore, in accordance with the terms of the contract, was added to the assessment for mortality, $6.47, making a total mortality call of $6.54.

Q. And that was added pursuant to what provision of the contract? A. The following condition in paragraph 2 entitled "Of Payments" appearing on the second page of Certificate 128293, Exhibit "D", "But if the laws of any country, state, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax", and the following condition appearing in Certificate 174416, Exhibit "E", on the second page, paragraph 2, entitled "Of Payments", "but if the laws of any country, state, county or municipality shall require a tax to be paid by said Company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax."

Q. Did the State of Missouri exact and did you regularly pay to the State of Missouri a tax on the assessment collected from members of your

Safety Fund Department? A. They did, and we paid the taxes.

Q. Was a similar notice, but for a different amount, prepared and sent to Frank Barber for his policy 174416?

Mr. Morrow: I object to the question for the reason that the notice itself is the best evidence of what the notice contained and this would be hearsay, for the reason that a notice is not the levy of assessment or taxes, or the requiring of the payment of it by the State of Missouri.

Mr. Haid: That was offered at the last trial of this case and offered without objection of the parties, and plaintiff is now bound by the waiver that he made at that time, of the evidence, when that was offered.

The Court: They claim that you haven't anything to show that the State of Missouri levied any such taxes.

Mr. Haid: The evidence is here that the State of Missouri demanded the taxes and that the State of Missouri got the taxes.

Mr. Bradley: Where is that evidence?

Mr. Haid: It is right here in this other deposition.

Mr. Aber: We object to that for the reason this insurance wasn't subject to that sort of taxes.

Mr. Haid: Your insurance department held that it was.

The Court: Well, you might read it subject to the objection.

To which ruling of the Court plaintiff duly excepted at the time.

(Question on page 30 of deposition was then read.)

Q. What was the address of Frank Barber as it

appeared on the books of your company at the time that mortuary call was sent out on January 29, 1910?

The plaintiff objects again for the reason that the books themselves are the best evidence.

Mr. Haid: They made no objection to it then.

Mr. Morrow: I don't want the witness to testify to the contents of these records. That is simply his conclusion whether it was the last record, or what it was.

The Court: The question of residence of Barber, as shown by their books.

Mr. Morrow: I think the copy of their books would be the best evidence.

The Court: I don't think they could bring all the records here all the way from Connecticut.

Objection overruled; plaintiff excepted at the time.

A. Forty-two hundred one Pleasant street.

Q. What city and state? A. St. Louis, Mo.

Q. Is this paper which I now hand you, and which will be marked "Exhibit M", a copy of such notice?

Mr. Morrow: I object to this question for the reason that it is offered as a copy without accounting for the original, and that the original is the best evidence and that the copy is incompetent.

A. It is.

Defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit M".

Mr. Morrow: I object to the offering of it in evi-

dence for the reason that it is a copy and not the original, and that the original is the best evidence.

Objection overruled. Plaintiff excepted.

Said exhibit is as follows:

**DEFENDANT'S EXHIBIT "M".**

Hartford Life Insurance Company,

Hartford, Conn. January 29th, 1910.

15

Frank Barber,

4201 Pleasant St., St. Louis, Mo.

2-174416.

This Call which will be due Mar. 1st, 1910, is made to meet 119 Deaths (as shown by accompanying list), Benefits, $322,378.48 and expenses on your policy, as follows:

| | |
|---|---|
| For Mortality Call | $13.09 |
| For Quarterly Dues to June next | 1.50 |
| | $14.59 |
| Credit, - $..... | |
| Dividend to be applied if payment be made | 1.40 |
| Amount due | $13.19 |

Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to Hartford Life Insurance Company.

Make all remittances by draft, check, post office or express money order when possible. Letters containing currency must be registered.

Special Notice of Quarterly Call No. 126.

Your next quarterly call will fall due and be payable June 1, 1910.

See over for Special Notice.

Special Notice.

If the payment of the above Quarterly Call is not received at this office on or before *March 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policyholder by registered letter, giving until *March 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *March 5, 1910, will be obliged to pay this fifty cent fee in order to have the policy unconditionally reinstated.

After *March 20, 1910, the limit allowed for payment under the registered notice, the company reserves the right to require a medical examination as a condition of reinstatement.

*If residence is on or west of the meridian of Salt Lake, Utah, ten days additional time is allowed.

Q. That notice was sent on what date? A. On the 29th day of January, 1910.

Q. What was the address of Frank Barber as it then appeared on the books of your company? A.

Forty-two hundred one Pleasant street, St. Louis, Missouri.

Q. And the amount of his insurance under policy 174416 was how much? A. Two thousand dollars.

Q. And the amount of his assessment on that $2,000 for mortality purposes was twice $6.47, was it not? A. Twelve dollars and ninety-four cents.

Q. And at the top of that notice are the figures "15" and the amount assessed on that notice for mortality call is $13.09. Will you please explain the significance of the "15" and the difference between the amount $13.09, which was charged by the call for mortality purposes, and the $12.94, which you say was assessment as calculated by you? A. The fifteen cents appearing on the call is the amount of tax which we would have been required to pay by the statutes of the State of Missouri, due the State of Missouri, provided the assessment had been paid, and the difference between the amount of assessment for mortality $12.94 and $13.09, the amount of the mortality call, is this tax of fifteen cents, which is added to the amount assessed for mortality in accordance with the terms of the contract quoted above.

Q. What became of the original of the notice to Frank Barber on call 126 levied against his policy 174416, being Exhibit "M", about which you are now testifying, after it was prepared? A. It was placed in an envelope addressed to Frank Barber at 4201 Pleasant street, St. Louis, Missouri, accompanied by a list of deaths included in call 126, an envelope addressed to the Hartford Life Insurance Company, in which the payment could be mailed to the company, if made, and another envelope addressed to Frank Barber at the address above given, in which the re-

ceipt would be sent to him in case he made the payment. A two-cent stamp was placed on the envelope and it was deposited in the post office at Hartford, Connecticut, on the 29th day of January, 1910.

Q. Now, has the company ever received back the original of either of those notices? A. It has not.

Q. And they are not in its possession? A. They are not.

Q. And the last time that the company had either Exhibit "L" or Exhibit "N" was when it deposited them in the mail addressed to Frank Barber of St. Louis, as you have testified? A. That is true.

Q. You have said that a list of the deaths included in call 126 was enclosed with each of the notices sent to Frank Barber on each of those policies for call 126. Was that list of deaths in print? A. Yes.

Q. And is this one of the retained printed copies of that list which was enclosed with each of those notices? A. It is.

The defendant offers paper referred to in evidence which is hereto attached and marked "Defendant's Exhibit N", as follows:

## EXHIBIT "N".

The Hartford Life Insurance Company.

The following members having died, the claims of their beneficiaries are included in the regular Quarterly Call No. 126, notice of which accompanies this list.

| Members | Location | Date of Death | Amt. Ins. |
|---|---|---|---|
| Austin, Moses S. | Bridgeport, Conn. | Feb. 13, 1907 | $ 3,000 |
| Saunders, Benj. F. | Salt Lake City, Utah | July 26, 1909 | 10,000 |
| Dye, Otis M. | Springfield, So. D. | Aug. 18, 1909 | 10,000 |
| Barnes, K. H. | Stowe, Vt. | Aug. 19, 1909 | 1,000 |
| Smith, M. W. | Montclair, N. J. | Aug. 20, 1909 | 1,000 |
| Divine, John F. | Wilmington, N. C. | Aug. 21, 1909 | 5,000 |
| Loveridge, Royal I. | Bridgeport, Conn. | Aug. 22, 1909 | 1,000 |
| Morgan, Chas. H. | Lake City, Ia. | Aug. 22, 1909 | 2,000 |
| Boutzahn, D. C. | Virden, Ill. | Aug. 22, 1909 | 2,000 |
| Lagare, Thos. K. | Atlanta, Ga. | Aug. 22, 1909 | 3,000 |
| Black, Sam'l McC. | St. John, N. B. | Aug. 23, 1909 | 2,000 |
| Wood, H. D. | Pinehurst, Ga. | Aug. 23, 1909 | 1,000 |
| Crawley, F. D. | London, England | Aug. 28, 1909 | 1,000 |
| Colting, C. H. | Indianapolis, Ind. | Aug. 30, 1909 | 1,000 |
| Davey, Thos. H. | Dover, N. J. | Aug. 30, 1909 | 1,000 |
| Zech, John | Newport, Ky. | Sept. 1, 1909 | 2,000 |
| Calvin, T. F. | Joplin, Mo. | Sept. 1, 1909 | 1,000 |
| Cohen, Leopold H. | New York, N. Y. | Sept. 3, 1909 | 8,000 |
| Sweeney, Patrick | Cleveland, Ohio | Sept. 3, 1909 | 1,000 |
| Creighton, Jas. A. | Ennis, Texas | Sept. 3, 1909 | 2,000 |
| Berkele, Henry | New York, N. Y. | Sept. 4, 1909 | 2,500 |
| Bisping, Fred | Chicago, Ill. | Sept. 4, 1909 | 1,000 |
| Jarrett, Henry D. | Springfield, Mo. | Sept. 4, 1909 | 2,000 |
| Pickett, B. F. | Waterbury, Vt. | Sept. 5, 1909 | 1,000 |
| Abler, Simon | Akron, Ohio | Sept. 6, 1909 | 1,000 |
| Stevens, Chas. E. | Rutland, Vt. | Sept. 6, 1909 | 4,000 |
| Strong, C. H. | Sterling, Kans. | Sept. 6, 1909 | 2,000 |
| McCabe, Wm. L. | Lawrence, Mass. | Sept. 7, 1909 | 1,000 |
| Green, C. J. | Dallas, Texas | Sept. 7, 1909 | 5,000 |

| | | | | |
|---|---|---|---|---|
| Patton, John M. | Olympia, Wash. | Sept. | 7, 1909 | 2,0 |
| Albritton, A. A. | Kinston, N. C. | Sept. | 8, 1909 | 1,0 |
| Myers, Jacob A. D. | Max Meadows, Va. | Sept. | 9, 1909 | 2,0 |
| Lester, W. A. | Mankato, Minn. | Sept. | 10, 1909 | 1,0 |
| Bezanson, Wm. H. | Somerville, Mass. | Sept. | 11, 1909 | 2,0 |
| Neubecker, Alex | Cleveland, Ohio | Sept. | 11, 1909 | 2,0 |
| Berggren, Emil | Malden, Mass. | Sept. | 12, 1909 | 1,0 |
| Sandhoff, Henry | Cleveland, Ohio | Sept. | 13, 1909 | 1,0 |
| Eaton, Albert C. | Stafford Spgs., Conn. | Sept. | 13, 1909 | 1,0 |
| Wallace, Hawson H. | Amarillo, Texas | Sept. | 13, 1909 | 6,0 |
| Eppel, Adam | Philadelphia, Pa. | Sept. | 15, 1909 | 1,0 |
| Love, Lucien | Coleman, Texas | Sept. | 16, 1909 | 2,0 |
| Rielley, Jas. P. | Cleveland, Ohio | Sept. | 16, 1909 | 1,0 |
| King, Wm. H. | Attleboro, Mass. | Sept. | 17, 1909 | 1,0 |
| Meinhard, Isaac | New York, N. Y. | Sept. | 18, 1909 | 10,0 |
| Marsh, Cyrus C. | Union City, Pa. | Sept. | 19, 1909 | 4,0 |
| Bright, Wm. | St. Louis, Mo. | Sept. | 19, 1909 | 5,0 |
| Botsford, Alfred M. | Bridgeport, Conn. | Sept. | 20, 1909 | 1,0 |
| Bunn, James B. | Hamburg, Ark. | Sept. | 20, 1909 | 1,0 |
| Raymond, Lewis | Waterbury, Conn. | Sept. | 22, 1909 | 2,0 |
| Fahey, Patrick | Wallingford, Conn. | Sept. | 22, 1909 | 2,0 |
| Allen, Wm. J. | Dallas, Texas | Sept. | 22, 1909 | 3,0 |
| Hasler, Bernard | Taftville, Conn. | Sept. | 23, 1909 | 5 |
| Jones, Albert F. | Hartford, Conn. | Sept. | 23, 1909 | 1,0 |
| Harrison, Moses C. | Fredericton, N. B. | Sept. | 23, 1909 | 2,0 |
| Houghton, Edw. T. | Springfield, Mass. | Sept. | 23, 1909 | 2,0 |
| Wasem, Jacob | Shrewsbury, Mo. | Sept. | 24, 1909 | 2,0 |
| Becker, Fred'k A. | St. Louis, Mo. | Sept. | 26, 1909 | 2,0 |
| Moodie, R. B. | Dayton, Ohio | Sept. | 28, 1909 | 2,0 |
| Van Vechter, Giles F. | Cedar Rapids, Ia. | Sept. | 29, 1909 | 5,0 |
| White, C. I. | Cresco, Iowa | Sept. | 30, 1909 | 2,0 |
| Allen, G. H. | Claude, Texas | Sept. | 30, 1909 | 2,0 |
| Cavagna, Peter | Cincinnati, Ohio | Oct. | 1, 1909 | 5,0 |
| Nichols, Jerome B. | Plantsville, Conn. | Oct. | 1, 1909 | 2,0 |
| Barton, Jr., H. A. | Dalton, Mass. | Oct. | 1, 1909 | 2,0 |
| Loux, John | Lorain, Ohio | Oct. | 3, 1909 | 2,0 |
| McLaughlin, David | La Fayette, Ind. | Oct. | 3, 1909 | 4,0 |
| Roberts, Edw. L. | Broadford, Va. | Oct. | 3, 1909 | 1,878. |

| | | | | |
|---|---|---|---|---|
| Graf, Louis | Brooklyn, N. Y. | Oct. | 4, 1909 | 5,000 |
| Perkins, Wm. T. | Orange, N. J. | Oct. | 4, 1909 | 1,000 |
| Pfeuffer, Geo. | Elizabeth, N. J. | Oct. | 4, 1909 | 1,000 |
| McPheeters, Thomas | St. Louis, Mo. | Oct. | 5, 1909 | 3,000 |
| Colbert, John | Portland, Conn. | Oct. | 6, 1909 | 1,000 |
| Chambers, Alfred E. | Petersburg, Ky. | Oct. | 7, 1909 | 5,000 |
| Hull, P. H. | Hartford, Conn. | Oct. | 8, 1909 | 1,000 |
| Leggett, Wm. T. | Pittsburg, Pa. | Oct. | 10, 1909 | 5,000 |
| Toale, P. P. | New York, N. Y. | Oct. | 11, 1909 | 5,000 |
| Patterson, Stephen W. | Bridgeport, Conn. | Oct. | 12, 1909 | 1,000 |
| Rivest, Ugel E. | Holyoke, Mass. | Oct. | 12, 1909 | 1,000 |
| Buchanan, Thos. | Cincinnati, Ohio | Oct. | 12, 1909 | 5,000 |
| Post, Caleb A. | Jerseyville, Ill. | Oct. | 15, 1909 | 5,000 |
| Kelmly, John W. | Hillis, Ga. | Oct. | 15, 1909 | 1,000 |
| Cahill, Edw. | Norwalk, Conn. | Oct. | 17, 1909 | 1,000 |
| Bradley, John A. | Sedalia, Mo. | Oct. | 17, 1909 | 3,000 |
| Cowing, Ransom F. | Lakewood, N. Y. | Oct. | 19, 1909 | 2,000 |
| Penette, Henry | Chazy, N. Y. | Oct. | 19, 1909 | 1,000 |
| Gleisner, Michael | Brucetown, Va. | Oct. | 21, 1909 | 1,000 |
| Brown, Lewis J. | Waterloo, Iowa | Oct. | 22, 1909 | 1,000 |
| Woerner, Daniel | Epworth, Ill. | Oct. | 22, 1909 | 2,000 |
| Miller, Wm. | Aurora, Ill. | Oct. | 22, 1909 | 1,000 |
| Cox, F. Marcellus | Washington, D. C. | Oct. | 23, 1909 | 5,000 |
| Davis, John | Los Angeles, Cal. | Oct. | 24, 1909 | 2,000 |
| Minor, Chas. K. | Buffalo, N. Y. | Oct. | 25, 1909 | 2,000 |
| Pfetzing, Justus | Havana, Ill. | Oct. | 25, 1909 | 5,000 |
| Howard, Oliver Otis. | Burlington, Vt. | Oct. | 26, 1909 | 10,000 |
| Hunt, Marcus A. | Cincinnati, Ohio | Oct. | 26, 1909 | 5,000 |
| Dyer, Chas. A. | Lacona, N. Y. | Oct. | 26, 1909 | 1,000 |
| Berwanger, Benj. | Far Rockaway, N. Y. | Oct. | 27, 1909 | 5,000 |
| Dettmann, Jno. F. D. | Cleveland, Ohio | Oct. | 28, 1909 | 1,000 |
| Kespohl, Julius C. | W. Quincy, Ill. | Oct. | 28, 1909 | 2,000 |
| Carlisle, Wm. C. | New Decatur, Ala. | Oct. | 29, 1909 | 2,000 |
| Prager, Moses | Savannah, Ga. | Oct. | 29, 1909 | 5,000 |
| Moss, Ulysses F. | Louisville, Ky. | Oct. | 29, 1909 | 7,000 |
| McGinley, Hugh | Wilmington, Del. | Oct. | 30, 1909 | 1,000 |
| Fisher, Albert W. | Boston, Mass. | Oct. | 31, 1909 | 5,000 |
| Quinn, Pat'k J. | Bridgeport, Conn. | Oct. | 31, 1909 | 2,000 |

| | | | |
|---|---|---|---|
| Gilligan, John | Charlotte, N. C. | Nov. 1, 1909 | 1,000 |
| Taylor, Riley T. | Baltimore, Md. | Nov. 1, 1909 | 3,000 |
| Carson, David U. | Commerce, Ga. | Nov. 3, 1909 | 1,000 |
| Weiland, Chas. | Milwaukee, Wis. | Nov. 3, 1909 | 2,500 |
| Meroney, Wm. A. | San Francisco, Cal. | Nov. 4, 1909 | 2,000 |
| Doak, T. J. | Woodbury, Tenn. | Nov. 4, 1909 | 2,000 |
| Buchel, Otto | Cuero, Texas | Nov. 4, 1909 | 5,000 |
| Allen, Wm. H. | New York, N. Y. | Nov. 6, 1909 | 5,000 |
| Whiton, Erastus | W. Somerv'e, Mass. | Nov. 6, 1909 | 1,000 |
| Standish, Wm. O. | Montpelier, Vt. | Nov. 6, 1909 | 2,000 |
| Stewart, Chas. A. | Chicago, Ill. | Nov. 7, 1909 | 2,000 |
| Jenner, John W. | [illegible]d, Ohio | Nov. 8, 1909 | 15,000 |
| Hatcher, J. E. | Cordele, Ga. | Nov. 9, 1909 | 1,000 |
| Lockwood, Frank J. | Randolph, N. Y. | Nov. 9, 1909 | 1,000 |

Q. In your calculation on policy 128293 you took as your initial figure the rate opposite age 51 and divided that by three—got two-thirds of that amount which was 1.54, which you multiplied by the ratio 4.20. In your calculation in respect to policy 174416 you took as your initial figure the rate shown on the back of that policy opposite age 50, to wit, rate 1.54, and multiplied that by the ratio 4.20 without first dividing it by three. Will you please state why it was that you in making the calculation divided one rate as shown on the back of the table by three and in the other case you did not divided the rate by three? A. Because in the case of certificate 128293, as I have before explained, the ten dollar deposit to the Safety Fund was paid from the assessments for mortality.

Q. Pursuant to what provision? A. Pursuant to the following clause of the contract which reads "one-third of the proceeds of such mortality calls to be applied toward the said Safety Fund until the sum of ten dollars on each $1,000 of indemnity aforesaid

shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon". The table rate on this certificate was calculated to cover the deposit to the Safety Fund, and after the deposit was completed only two-thirds of the table rate was used in determining the mortality calls. There was no such provision in certificate 174416, this certificate requiring the payment on the Safety Fund deposit of ten dollars per $1,000 of insurance during the first year of membership, and the table rate for mortality therefor, as printed on the certificate, was only two-thirds of that printed on certificate 128293, the table rate for age 51, the age in question, being 1.54 as shown therein.

Q. As a matter of fact the assessment against Barber was based on the table rate of 1.54 at age 51, being the rate shown in the table in figures on policy 174416, being two-thirds of the rate shown in the table on policy 128293? A. That is right.

Q. And the difference in the amount assessed against him on the one policy for mortality purposes and the amount assessed him on policy 174416 and policy 128293 is that one of the policies is for $2,000 and one for $1,000? A. That is right.

Q. In each of these notices, Exhibits "L" and "M", is a statement which reads as follows: "Payment will not be accepted later than March 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah". Did the defendant company receive payment of either of those calls on or before March 5, 1910, or at any time before or after that date? A. It did not.

Q. Was the amount of these assessments or any

amount tendered to the company? A. There was not.

Q. I show you an envelope, which bears upon it in the upper left-hand corner, the return card of the Hartford Life Insurance Company, which is addressed by some mechanical process in printed type as follows: "Frank Barber, 2637 N. Sarah St., St. Louis, Mo.," and at the lower left-hand side of the address, in print also, are the figures 128293. The street address, to wit, 2637 N. Sarah St., has been stricken out with pencil lines drawn across the words and figures 2637 N. Sarah St., and at the bottom of the envelope, in pencil, appears the words and figures 4201 Pleasant St. Will you explain how, and under what circumstances that envelope was originally prepared, and how it came back to you with the changes on it? A. That envelope was originally prepared in the office of the Hartford Life Insurance Company, being addressed there to Frank Barber, on an Elliott addressing machine, and sent to him with the notice of the call due March 1st, 1906, or some call prior thereto. It was received by the Hartford Life Insurance Company in March, 1906, with a remittance of the call due on that date on certificate 128293 on the life of Frank Barber. The address appearing thereon as 2637 N. Sarah St., St. Louis, Mo., was the address as it appeared on the books of the company at that time. This number and street address being ruled off and 4201 Pleasant street written thereon, indicated to us that Frank Barber had changed his address.

Q. Is this a copy of the envelope you have just testified to? A. It is.

The defendant offers envelope referred to in evi-

dence, which is hereto attached and marked Defendant's Exhibit "O".

**EXHIBIT "O".**

After 10 days, return to
The Hartford Life Insurance Co.
Hartford, Conn.

Return this envelope unsealed for receipt.

Frank Barber
2637 N. Sarah St (Erased)
St. Louis
128293 Mo.
4201 Pleasant St

Q. That envelope has been retained by your company in your office, and among your files, since it was thus returned with the change on it, as you have above testified? A. It has.

Q. Following that, did you send to Frank Barber a postal card, which I now show you, and what was its condition when you sent the postal card to him? A. We did send a postal card to Frank Barber, and it was blank, excepting on its face, which was addressed in print to the Hartford Life Insurance Company, Hartford, Connecticut.

Q. And with respect to the back of it, or the letter part of it, what was the condition? A. Nothing was written on it.

Q. But all the printed matter was there? A. That is right.

Q. And as the card went out, at the bottom, the printed matter read: "You will please address all communications, until further notice, to the under-

signed at ..... street, city of ..... county of ..... and state of ..... Sign here?" A. That is right.

Q. Did that card come back to you, and if so, at what date? A. That card came back to us on the 14th day of March, 1906.

Q. And when it came back was the lower part, which I have just read, and the blanks filled in as they now appear on the card? A. They were.

Q. So that when the card came back to you with the blanks filled in it read: "You will please address all communications, until further notice, to the undersigned at 4201 Pleasant Street, City of St. Louis, County of ..... and State of Missouri. Sign here. Frank Barber?" A. That is right.

Q. You have said that Frank Barber's address as it formerly appeared on the books of the company was 2637 North Sarah street, St. Louis, Missouri; is that correct?

Mr. Morrow: I object to that, because the records are the best evidence.

A. It was.

Q. After the return of that card was his address on your record changed, and if so what was the change made?

Mr. Morrow: I object to that. The records themselves are the best evidence as to what change was made.

A. The address was changed to 4201 Pleasant street.

Q. Is the paper which you now have before you, and which will be marked Exhibit "P", a copy of one of your records? A. It is.

Q. And of what record; what do you call it? A. Copy of certificate register.

Q. And does that register contain the names and addresses of the members of the Men's Division of the Safety Fund Department? A. It does.

Q. And is this a copy of so much of the record as pertains to policy 174416 issued to Frank Barber? A. It is.

Q. In so far as it relates to his name and his address? A. It is.

Q. The page is ruled for a series of records concerning different policies and the records concerning each policy appearing between the double-ruled blue lines? A. That is right.

Q. And so much as refers to the name and address of Frank Barber as it appears on your books with respect to policy 174416 is shown on this copy? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit P", as follows:

**DEFENDANT'S EXHIBIT "P".**

Assessment Register: This record was as follows:

Number of Policy—174416.
Date—9/4/1893—M. Zener.
Age—35.
Name—Frank Barber.
$2,000.
Canceled 3/31/1910.
Post Office Address—St. Louis.
Street No.—4201 Pleasant St.—3/26/06.
County—St. Louis.
State—Missouri.
Notice Sent—Jan. 29, 1910.
Register Notice Sent—3/11/10. M.

*Q. Now*, when was it that the address of these records, Exhibits "P" and "Q", was changed to 4201 Pleasant street? A. The 26th day of March, 1906.

The postal card, a copy of which has been heretofore testified about, and which came back, as testified on March 14, 1906, with the address 4201 Pleasant street, St. Louis, Missouri, inserted therein, is offered in evidence and hereto attached and marked "Defendant's Exhibit R".

**DEFENDANT'S EXHIBIT "R".**

St. Louis, 3/12/1906.

Dear Sir:

We notice in your last communication an indication that you have changed your address, but you do not include a request to make the change. **If you wish us to make use of the changed address, please fill and sign the following form and return by first mail. The personal signature of the insured to these instructions is necessary.**

Chas. H. Bacall, Sec'y.

Hartford Life Insurance Company.

You will please address all communications until further notice to the undersigned at 4201 Pleasant street, City of St. Louis, County of ....., and State of Mo.

(Sign here) Frank Barber.

(Stamp) (Stamp)

Post Mark:
Hartford, Conn., Mar. 14,
7 A. M., 1906.

Post Mark:
St. Louis, Mo., Mar. 12,
4:30 P. M., 1906.

POSTAL CARD.

Hartford Life Insurance Co.,
Hartford.
Conn.

Q. Has that address of Frank Barber, as it appears on these records, 4201 Pleasant street, St. Louis, Missouri, been the address which appeared on your records since the date you have indicated, March 26, 1906, down to the present time? A. It has.

Q. Did you, on March 10, 1910, send to Frank Barber any other or further notice on mortality call 126, and how were those notices sent? A. We did send other notices to Frank Barber on March 10, 1910, one in connection with certificate 128293 and the other in connection with certificate 174416. Those notices were sent by registered mail.

Q. Was a registered letter notice sent to Frank Barber March 11, 1910, with respect to call 126 on policy 174416? A. There was.

Q. What are the papers which I now hand you? A. They are copies of notices which were sent to Frank Barber in connection with certificate 174416 on his life, on March 11, 1910. One of these papers is a copy of the original notice which was mailed on January 29, 1910, in connection with that certificate, except that the words "Second Notice" were stamped upon it; the other has on it "Hartford Life Insurance Company, Hartford, Connecticut, registered letter notice," and is the regular second notice which was sent by registered mail.

Q. Were those two notices enclosed in an envelope and deposited in the post office at Hartford? A. They were.

Q. And sent by registered mail? A. They were.

Q. And were sent by registered mail on what date? A. March 11, 1910.

The defendant offers papers referred to in evidence, which are attached, the registered letter notice being marked "Exhibit T-1" and the second notice being marked "Exhibit T-2", as follows:

**DEFENDANT'S EXHIBIT "T-1".**

Hartford Life Insurance Company.
Hartford, Conn.
Registered Letter Notice.

March 11 1910.

You are hereby notified that Quarterly Call No. 126, on Policy No. 2-174416, notice of which was

mailed you Jan. 29, 1910, and duplicate of which is enclosed herewith, has not been paid.

Unless the amount of $13.69 the amount due on said Quarterly Call including fifty cents for this notice, is received at this office on or before *Mar. 20, 1910, your policy will be cancelled.

*Mar. 30th if residence is on or west of the meridian of Salt Lake, Utah.

Geo. E. Keeney,
President.

**DEFENDANT'S EXHIBIT "T-2".**

Special Notice of Quarterly Call No. 126.

Your next Quarterly Call will fall due and be payable June 1, 1910.

Hartford Life Insurance Company.

Hartford, Conn. January 29th, 1910.

Frank Barber,
4201 Pleasant St., 15
St. Louis, Mo.

2-174416 This Call which will be due Mar. 1st, 1910, is made to meet 119 Deaths (as shown by accompanying list). Benefits, $322,378.48 and expenses on your policy, as follows:

| | |
|---|---|
| For Mortality Call | $13.09 |
| For Quarterly Dues to June next | 1.50 |
| | $14.59 |
| Credit, - $..... | |
| Dividend to be applied if payment be made | 1.40 |
| Amount due | $13.19 |

Payment will not be accepted later than Mar. 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Mar. 15, 1910.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to
Hartford Life Insurance Company.

Make all remittances by Draft, Check, P. O. or Express Money Order when possible. Letters containing currency must be registered.

See over for Special Notice.

Special Notice.

If the payment of the above Quarterly Call is not received at this office on or before *Mar. 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policyholder by registered letter, giving until *Mar. 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Mar. 5, 1910, will be obliged to pay this fifty cent fee in order to have the policy unconditionally reinstated.

After *Mar. 20, 1910, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of re-instatement.

*If residence is on or west of the meridian of Salt Lake, Utah, ten days additional time is allowed.

Stamped on face of above: "Second Notice."

Mr. Morrow: I object to the offering of Exhibit "T-1" and "T-2" in evidence, for the reason that they are not originals and the originals are not accounted for.

Q. Is the paper which I now show you, a copy of which will be marked "Exhibit V", registry return receipt for registered letter which you sent out under date of March 11, 1910, as respects policy 174416? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit V", as follows:

**DEFENDANT'S EXHIBIT "V".**

(Copy)
Post Office Department
Official Business
Penalty for Private Use to Avoid Payment
of Postage, $300.
Original Reg. No. 2197

Return to:
Hartford Life Insurance Co.
(Name of Sender)
51721
Street and Number
or Post Office Box
Hartford,
Connecticut.

Postmark of Delivering Office.
(Water Tower Sta. Saint Louis, Mo.
Registered. Mar. 14, 1910.)
and Date of Delivery.
(Stamped)
St. Louis, Mo., Mar. 14, 12 p. m.

This card must be neatly and correctly made up and addressed at the post office where the article is registered. The postmaster who delivers the registered article must see that this card is properly signed, legibly postmarked, and mailed to the sender, without envelope or postage.

188. Form 1548.

Registry Return Receipt.

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.
Date of delivery, Mar. 14, 1910.

(To be filled in by person signing receipt.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

Frank Barber
(Signature or name of addressee)

.....
(Signature of addressee's agent)

A registered article must not be delivered to anyone but the addressee or the person in whose care it is addressed, except upon addressee's written order or a written order from the sender transmitted by the mailing postmaster and duly verified.

When the above receipt has been properly signed, it must be postmarked with the name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

Q. The originals of these registry return receipts are now before you? A. They are.

Q. Has the original of registered letter notice and of the assessment notice therein enclosed, marked "Second Notice", which was sent out by you on March 11, 1910, with respect to policy 174416 ever been returned to you? A. It has not.

Q. And have you ever seen either of the registered letter notices or of the accompanying documents since they were sent by mail as you have testified? A. I have not.

Q. On March 22nd, 1906, after you received back the postal card which contained the address 4201 Pleasant street, and which has been offered in evidence and marked "Exhibit R", did you write to Frank Barber? A. We did on March 22nd, 1906. We wrote acknowledging receipt of his instructions that we would change his address to 4201 Pleasant street, St. Louis, Missouri.

Q. Is the paper which you now have before you a copy of the letter which you wrote to Frank Barber? A. It is.

Q. As preserved by you in the records of the company? A. It is.

Q. What has become of the original of that letter? A. The original of that letter was mailed to Frank Barber at his address at St. Louis on the 22nd day of March, 1906.

Q. Have you ever seen the original of that letter since? A. We have not.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Exhibit W", as follows:

**DEFENDANT'S EXHIBIT "W".**

(Copy)

March 22, 1906.

MT

Frank Barber, Esq.,

Dear Sir: We acknowledge receipt of your instructions dated, for change of address to 4201 Pleasant street, St. Louis, Mo., for all notices of amounts to become due under Policy No. 128293, and will give the same proper attention.

Yours respectfully,

Chas. H. Bacall,

Secretary.

Q. I show you a letter dated St. Louis, December 3rd, 1901, purporting to be signed by Frank Barber, a copy of which will be attached to these depositions and marked "Exhibit K", and ask you if the defendant company received that letter, and, if so, about what date? A. The company did receive that letter about the 5th of December.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Exhibit X", as follows:

**EXHIBIT "X".**

St. Louis, Dec., 3rd, 1909.

Gentlemen:

Please enclosed find order for $21.38 as per last notice and also inform me why it is that the quarterly premiums are continually increasing.

Hoping for a favorable reply at once, I remain,

Yours respectfully,

Frank Barber.

Q. Did the company reply to that letter last referred to, under date of December 16th, and is the paper which I now show you a copy of the letter of that date sent to Frank Barber? A. It is.

The defendant offers paper referred to in evidence which is hereto attached and marked "Exhibit Y", as follows:

**EXHIBIT "Y".**

Dec. 16, 1909.

Mr. Frank Barber,
St. Louis, Mo.

Dear Sir:

We are in receipt of your favor of the 3rd inst., in reference to Certificates 174416, 128293 on the life of Frank Barber.

We note what you have to say in regard to the increase in the assessments, and in reply would state that you evidently do not understand the plan on which this Certificate was issued or the method of computing assessments. We enclose herewith an explanation of the manner in which assessments are computed on this Certificate.

You will see that there are two factors which determine the amount of the assessments; one the rate, which is fixed for each age, and the other the ratio, which depends upon the actual mortality experienced in the Men's Division of the Safety Fund Department of the company. This Certificate is now assessed at the rate for age 51 and on call due December 1st, at a ratio of 4.20, as you will note by the table of ratios on the reverse side of the slip mentioned above.

The increase in the amount of this call over the last call is due to the increase in the ratio from 3.80 to

4.20, due to an increase in death losses from $309,500.00 to $334,750.00. You will note that the rate as far as the age is concerned does not increase beyond age 65. The assessments beyond that age, however, will still vary, as they will depend upon the ratio, which varies with the mortality experienced by the company.

It is true that the cost of this insurance has increased as the assessments have been levied in accordance with the system and the terms of the contract, but as a matter of fact, this Certificate has given cheaper insurance than could have been had in any company of which we know which gives real insurance.

We enclose receipts for the call due the 1st inst.

Very truly yours,

Secretary.

Q. The original of that was sent to whom? A. Frank Barber.

Q. By mail? A. By mail.

Q. Have you seen the original of it since? A. We have not.

Q. Do your records show the date upon which each assessment call was paid on each of these policies? A. They do.

Q. Have you compiled from your records the dates on which assessment was paid under each of these policies? A. I have.

Q. Is the paper which I now show you a compilation from your records showing with respect to certificate No. 174416, the year, the call number, the amount of assessment, date of notice, date when due,

date when paid, in respect to each assessment against Frank Barber on that certificate? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit AA":

**DEFENDANT'S EXHIBIT "AA".**

Certificate No. 174416.

Frank Barber.

| Year | Call No. | Amt. of Ass'mt | Date of Notice | Date Due | Date Paid |
|---|---|---|---|---|---|
| 1894 | 62 | 1.80 | 1-30-94 | 3-1-94 | 3- 1-94 |
| | 63 | 4.45 | 5- 2 | 6-1 | 5-30 |
| | 64 | 4.45 | 8- 2 | 9-1 | 8-30 |
| | 65 | 4.60 | 11- 1 | 12-1 | 11-30 |
| 1895 | 66 | 4.60 | 1-30-95 | 3-1 | 2-28-95 |
| | 67 | 5.33 | 5- 2 | 6-1 | 5-31 |
| | 68 | 4.90 | 8- 2 | 9-1 | 9- 2 |
| | 69 | 5.06 | 11- 1 | 12-1 | 12- 2 |
| 1896 | 70 | 5.06 | 1-30-96 | 3-1 | 3- 3-96 |
| | 71 | 5.06 | 5- 2 | 6-1 | 6- 3 |
| | 72 | 5.06 | 8- 2 | 9-1 | 9- 1 |
| | 73 | 5.18 | 11- 1 | 12-1 | 12- 2 |
| 1897 | 74 | 5.18 | 1-29-97 | 3-1 | 3- 2-97 |
| | 75 | 5.18 | 5- 2 | 6-1 | 6- 2 |
| | 76 | 5.18 | 8- 2 | 9-1 | 9- 2 |
| | 77 | 5.34 | 11- 1 | 12-1 | 12- 4 |
| 1898 | 78 | 5.57 | 1-30-98 | 3-1 | 3- 3-98 |
| | 79 | 6.67 | 5- 2 | 6-1 | 5-30 |
| | 80 | 6.67 | 8- 2 | 9-1 | 9- 1 |
| | 81 | 6.86 | 11- 1 | 12-1 | 12- 2 |

| | | | | | |
|---|---|---|---|---|---|
| 1899 | 82 | 6.85 | 1-30-99 | 3-1 | 3- 2-99 |
| | 83 | 6.85 | 5- 2 | 6-1 | 6- 5 |
| | 84 | 6.85 | 8- 2 | 9-1 | 9- 1 |
| | 85 | 6.98 | 11- 1 | 12-1 | 12- 2 |
| 1900 | 86 | 6.98 | 1-30-00 | 3-1-00 | 3- 2-00 |
| | 87 | 6.98 | 5- 2 | 6-1 | 6- 4 |
| | 88 | 7.57 | 8- 2 | 9-1 | 9- 5 |
| | 89 | 7.69 | 11- 1 | 12-1 | 12- 5 |
| 1901 | 90 | 7.69 | 1-30-01 | 3-1-01 | 3- 5-01 |
| | 91 | 7.69 | 5- 2 | 6-1 | 6- 5 |
| | 92 | 8.53 | 8- 2 | 9-1 | 9- 5 |
| | 93 | 8.06 | 11- 1 | 12-1 | 12- 5 |
| 1902 | 94 | 9.14 | 1-30-02 | 3-1-02 | 3- 5-02 |
| | 95 | 9.14 | 5- 2 | 6-1 | 6- 5 |
| | 96 | 9.07 | 8- 2 | 9-1 | 9- 4 |
| | 97 | 8.00 | 11- 1 | 12-1 | 12- 5 |
| 1903 | 98 | 8.00 | 1-30-03 | 3-1-03 | 3- 5-03 |
| | 99 | 8.00 | 5- 2 | 6-1 | 6- 5 |
| | 100 | 8.00 | 8- 2 | 9-1 | 9- 5 |
| | 101 | 7.02 | 11- 1 | 12-1 | 12- 5 |
| 1904 | 102 | 8.26 | 1-30-04 | 3-1-04 | 3- 5-04 |
| | 103 | 9.50 | 5- 2 | 6-1 | 6-20 |
| | 104 | 9.50 | 8- 2 | 9-1 | 9- 5 |
| | 105 | 9.23 | 11- 1 | 12-1 | 12- 5 |
| 1905 | 106 | 9.23 | 1-30-05 | 3-1-05 | 3- 4-05 |
| | 107 | 9.74 | 5- 2 | 6-1 | 6- 5 |
| | 108 | 9.21 | 8- 2 | 9-1 | 9- 5 |
| | 109 | 10.12 | 11- 1 | 12-1 | 12- 5 |
| 1906 | 110 | 10.12 | 1-30-06 | 3-1-06 | 3- 5-06 |
| | 111 | 9.31 | 5- 2 | 6-1 | 6- 5 |
| | 112 | 9.99 | 8- 2 | 9-1 | 9- 5 |
| | 113 | 8.85 | 11- 1 | 12-1 | 12- 5 |

| | | | | | |
|---|---|---|---|---|---|
| 1907 | 114 | 9.68 | 1-30-07 | 3-1-07 | 3- 5-07 |
| | 115 | 9.80 | 5- 2 | 6-1 | 6- 5 |
| | 116 | 8.84 | 8- 2 | 9-1 | 9-18 |
| | 117 | 8.61 | 11- 1 | 12-1 | 12-20 |
| 1908 | 118 | 9.18 | 1-30-08 | 3-1-08 | 3-24-08 |
| | 119 | 10.88 | 5- 2 | 6-1 | 6-20 |
| | 120 | 10.32 | 8- 1 | 9-1 | 9- 5 |
| | 121 | 9.92 | 11- 1 | 12-1 | 12- 5 |
| 1909 | 122 | 11.30 | 1-30-09 | 3-1-09 | 3- 5-09 |
| | 123 | 11.30 | 5- 1 | 6-1 | 6- 5 |
| | 124 | 11.30 | 8- 2 | 9-1 | 9-21 |
| | 125 | 13.09 | 11- 1 | 12-1 | 12- 6 |

Q. Is the paper which I now show you a compilation from your records showing the year, the date when due and the date when paid with respect to the dues on certificate 174416? A. It is.

Q. And the amount of dues paid on that certificate at the several dates therein named was how much? A. One dollar and fifty cents.

Q. In Exhibit "M", being notice of call 126 on policy 174416 there is an item of quarterly dues to June next, $1.50; what does that refer to? A. That item refers to the quarterly dues which were payable under the following provisions in the contract, certificate 174416, in paragraph 2 on the second page, entitled "Of Payments". "The member agrees to pay to said Company, for expenses, dues of three dollars per annum on each $1,000 indemnity on the first day of the month after date of issue hereof and at every anniversary thereafter, so long as this certificate shall remain in force; or by *pro rata* installments of the same, in advance, for periods of less than a year." Dues on this certificate were paid quarterly

on the regular assessment dates, and there were therefore dues of $1.50 due on the first day of March, 1910.

Q. One dollar and fifty cents being one-fourth of six dollars, and six dollars being the amount of dues payable on that policy per annum because of the provision that he was to pay three dollars per annum per thousand? A. Yes.

Q. Was that item of $1.50 dues ever paid? A. It was not.

Q. Do your records show the dates on which dues on each of these policies was paid by Frank Barber while the policies were in force? A. They do.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit CC", as follows:

**DEFENDANT'S EXHIBIT "CC".**

Certificate No. 174416. Frank Barber.

| | Dues. | |
|---|---|---|
| Year | Date Due | Date Paid |
| 1893..... | 9-1-93 | 9-15-93 |
| | 12-1 | 11-30 |
| 1894..... | 3-1-94 | 3- 1-94 |
| | 6-1 | 5-30 |
| | 9-1 | 8-30 |
| | 12-1 | 11-30 |
| 1895..... | 3-1-95 | 2-28-95 |
| | 6-1 | 5-31 |
| | 9-1 | 9- 2 |
| | 12 1 | 12- 2 |

| | | |
|---|---|---|
| 1896..... | 3-1–96 | 3- 3–96 |
| | 6-1 | 6- 3 |
| | 9-1 | 9- 1 |
| | 12-1 | 12- 2 |
| 1897..... | 3-1–97 | 3- 2–97 |
| | 6-1 | 6- 2 |
| | 9-1 | 9- 2 |
| | 12-1 | 12- 4 |
| 1898..... | 3-1–98 | 3- 3–98 |
| | 6-1 | 5-30 |
| | 9-1 | 9- 1 |
| | 12-1 | 12- 2 |
| 1899..... | 3-1–99 | 3- 2–99 |
| | 6-1 | 6- 5 |
| | 9-1 | 9- 1 |
| | 12-1 | 12- 2 |
| 1900..... | 3-1–00 | 3- 2–00 |
| | 6-1 | 6- 4 |
| | 9-1 | 9- 5 |
| | 12-1 | 12- 5 |
| 1901..... | 3-1–01 | 3- 5–01 |
| | 6-1 | 6- 5 |
| | 9-1 | 9- 5 |
| | 12-1 | 12 -5 |
| 1902..... | 3-1–02 | 3- 5–02 |
| | 6-1 | 6- 5 |
| | 9-1 | 9- 5 |
| | 12-1 | 12 -5 |
| 1903..... | 3-1–03 | 3- 5–03 |
| | 6-1 | 6- 5 |
| | 9-1 | 9- 5 |
| | 12-1 | 12 -5 |

| | | |
|---|---|---|
| 1904..... | 3-1–04 | 3- 5–04 |
| | 6-1 | 6-20 |
| | 9-1 | 9- 5 |
| | 12-1 | 12- 5 |
| 1905..... | 3-1–05 | 3- 4–05 |
| | 6-1 | 6- 5 |
| | 9-1 | 9- 5 |
| | 12-1 | 12- 5 |
| 1906..... | 3-1–06 | 3- 5–06 |
| | 6-1 | 6- 5 |
| | 9-1 | 9- 5 |
| | 12-1 | 12- 5 |
| 1907..... | 3-1–07 | 3- 5–07 |
| | 6-1 | 6- 5 |
| | 9-1 | 9-18 |
| | 12-1 | 12-20 |
| 1908..... | 3-1–08 | 3-24–08 |
| | 6-1 | 6-20 |
| | 9-1 | 9- 5 |
| | 12-1 | 12- 5 |
| 1909..... | 3-1–09 | 3- 5–09 |
| | 6-1 | 6- 5 |
| | 9-1 | 9-21 |
| | 12-1 | 12- 6 |

Q. Do your records show the amount of money received from the members of the Safety Fund Department, Men's Division, for mortality calls and the amount paid out therefrom for death losses, year by year, from 1880 down to December 31, 1909? A. They do.

Q. Is the paper which I now show you a statement, year by year, of the amount received from members of the Men's Division, Safety Fund Department, for

mortality calls, and the amount paid therefrom for death losses year by year? A. It is.

Q. The amount received for mortality calls being shown in the second column and the amount paid for death losses in the third column? A. That is right.

Q. What was the balance in the Mortuary Fund December 31st, 1909? A. Seventy-four thousand nine hundred thirty-eight dollars thirty-two cents.

Q. That is the last figure shown before the totals and designated "Mortality balance December 31st, 1909"? A. That is right.

Q. And is the paper which you now have before you? A. Yes.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit DD", as follows:

**DEFENDANT'S EXHIBIT "DD".**

The Company has received for mortuary purposes, and paid for death losses, during this long period, totals as follows:

Table No. 1.

| | Received from Mortality Calls | Paid for Death Losses |
|---|---|---|
| 1880..... | $ 21,551.02 | $ 17,965.00 |
| 1881..... | 118,263.17 | 111,603.00 |
| 1882..... | 158,710.19 | 147,440.00 |
| 1883..... | 210,823.83 | 199,165.00 |
| 1884..... | 217,047.36 | 207,427.00 |
| 1885..... | 386,204.91 | 434,415.00 |
| 1886..... | 515,029.50 | 516,940.00 |
| 1887..... | 573,775.08 | 531,589.00 |

| | | |
|---|---|---|
| 1888..... | 626,517.40 | 625,466.00 |
| 1889..... | 676,937.06 | 702,368.94 |
| 1890..... | 800,199.27 | 779,085.55 |
| 1891..... | 906,179.19 | 905,122.00 |
| 1892..... | 1,065,525.94 | 1,023,608.28 |
| 1893..... | 996,065.14 | 1,059,775.00 |
| 1894..... | 1,031,351.22 | 1,039,561.00 |
| 1895..... | 1,132,808.93 | 1,141,153.76 |
| 1896..... | 1,125,972.73 | 1,108,487.37 |
| 1897..... | 1,121,550.87 | 1,241,921.17 |
| 1898..... | 1,289,080.22 | 1,130,084.20 |
| 1899..... | 1,279,544.53 | 1,201,784.49 |
| 1900..... | 1,297,629.67 | 1,347,949.07 |
| 1901..... | 1,402,750.62 | 1,403,343.01 |
| 1902..... | 1,371,681.50 | 1,333,691.73 |
| 1903..... | 1,177,544.63 | 1,167,953.16 |
| 1904..... | 1,341,198.26 | 1,269,899.72 |
| 1905..... | 1,341,165.22 | 1,444,994.11 |
| 1906..... | 1,277,385.39 | 1,217,377.79 |
| 1907..... | 1,170,510.06 | 1,110,045.50 |
| 1908..... | 1,183,143.62 | 1,296,621.37 |
| 1909..... | 1,257,737.17 | 1,282,107.56 |
| Mortality balance Dec. 31, 1909 | | 74,938.32 |
| | $27,073,883.70 | $27,073,883.70 |

Q. In the trustee's contract, a copy of which is attached to the certificates of membership sued on in this case, it is provided as follows: "Now, therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the party of the second part and in accordance with its agreement with its certificate

holders as hereinbefore recited, does hereby appoint the party of the second part trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every certificate of membership issued by it in the aforesaid department until said fund shall amount to one million dollars, to be by said trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expenses of said trust, to be paid over to the party of the first part, as hereinafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements." I now show you paper, which will be marked "Exhibit EE", and ask you what the paper shows? A. That paper shows year by year the amount received in deposits from members, and the amount of such deposits deposited by the Hartford Life Insurance Company with the Security Company in accordance with the terms of the trustee's contract.

Q. Now, then, with respect to the year 1880, you received $20,363.52, and you deposited with the Security Company a similar amount; is that correct? A. It is.

Q. In the year 1881, under the column headed "Received from members", appear two items, $4,673.52 and $45,702.22, whereas the amount deposited as shown by this tabulation with the Security Company in that year was $45,698.76. Will you please explain why in the compilation under the year 1881 there are the two sets of figures, $4,673.52 and $45,702.22, and why the aggregate of those two amounts was not

deposited with the Safety Fund? A. As has been before stated in this testimony, the Safety Fund, Men's Division, of the Hartford Life Insurance Company, was established in 1880. In 1881 a separate division was established so that the Company could take a larger line of insurance on one life, the original limit of the Safety Fund Department being $5,000 on one life. The Security Fund division was absolutely separate, having a separate trustee's contract providing for a separate fund known as the Security Fund, and a separate Mortuary Fund, the members being assessed entirely separately from the members of the Safety Fund Department. The first item appearing, "Received from members" in the year 1881, $4,673.52, were the deposits received from the Security Fund. The second item, $45,702.22, was the amount received in deposits from the Men's Division of the Safety Fund. The first item was deposited with the Security Company, under the trustee's contract of the Security Fund, and deposited in that Fund, and only the second item was deposited in the Safety Fund under the terms of the trustee's contract creating that fund. The slight discrepancy between the amount received from members of the Safety Fund Department and the second item, $45,702.22, and the amount deposited with the Security Company, $45,698.76, was undoubtedly due to some small payments received the last day of the year which could not be deposited with the Security Company on that date, but were later so deposited. The same explanation is true of the items appearing under "Received from Members" in the years 1882, 1883, 1884, 1885 and 1886. The large amount, $155,166.34, appearing in the third column, deposited with

the Security Company in the year 1886, was occasioned by the transfer of all of the money then in the Security Fund and the Safety Fund of the Men's Division. At that time all of the contracts that were issued in the Security Fund Division were surrendered by the members of that division and new certificates were issued to them in the Safety Fund Department, their fund being then consolidated with the funds of the Men's Division of the Safety Fund Department.

Q. And the sum total of all of those years, the amount which you received from members, was $1,290,113? A. Yes.

Q. And the sum total received from all those members during the same period which goes down to and includes December 31st, 1909, was also $1,290,113? A. That is right.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit EE", as follows:

**DEFENDANT'S EXHIBIT "EE".**

| Year | Received from Members | Deposited with Security Co. |
|---|---|---|
| 1880..... | $ 20,363.52 | $ 20,363.52 |
| 1881..... | 4,673.52) | |
| | 45,702.22) | 45,698.76 |
| 1882..... | 13,097.07) | |
| | 53,799.48) | 53,234.94 |
| 1883..... | 24,873.77) | |
| | 67,112.44) | 67,586.20 |
| 1884..... | 17,139.44) | |
| | 52,257.31) | 52,351.55 |

| | | |
|---|---|---|
| 1885..... | 7,950.86) | |
| | 56,712.22) | 56,720.31 |
| 1886..... | 8,902.39) | |
| | 78,537.38) | 155,166.34 |
| 1887..... | 86,152.67 | 86,136.67 |
| 1888..... | 71,730.30 | 71,745.32 |
| 1889..... | 82,075.87 | 82,075.87 |
| 1890..... | 96,260.12 | 96,160.12 |
| 1891..... | 85,610.56 | 85,645.65 |
| 1892..... | 85,053.09 | 85,037.40 |
| 1893..... | 59,190.03 | 59,170.03 |
| 1894..... | 50,453.70 | 50,554.30 |
| 1895..... | 45,688.61 | 45,688.61 |
| 1896..... | 33,011.70 | 33,011.70 |
| 1897..... | 32,582.68 | 32,582.68 |
| 1898..... | 28,296.68 | 28,296.68 |
| 1899..... | 22,485.00 | 22,484.20 |
| 1900..... | 17,619.97 | 17,619.97 |
| 1901..... | 15,068.39 | 15,068.39 |
| 1902..... | 11,206.12 | 11,206.12 |
| 1903..... | 7,313.75 | 7,313.75 |
| 1904..... | 4,304.04 | 4,304.04 |
| 1905..... | 2,074.60 | 2,074.60 |
| 1906..... | 796.00 | 796.00 |
| 1907..... | 930.00 | 930.00 |
| 1908..... | 690.00 | 691.78 |
| 1909..... | 397.50 | 397.50 |
| | $1,290,113.00 | $1,290,113.00 |

Q. By the trustees' contract, a copy of which is set forth on certificates sued on in these cases, it is provided that after the funds shall reach $300,000 par value, of the bonds purchased for said fund, the

party of the second part will pay over to the party of the first part, semi-annually thereafter, all further income from said fund (less the accruing and unpaid compensation and expenses), to be paid by the party of the first part and used for the purposes mentioned in the hereinbefore recited agreements. Was the income and accretions from the Safety Fund paid over to you semi-annually by the Security Company, the trustee in that contract? A. It was.

Q. What did you do with that income and accretion as paid over to you? A. We apportioned it to the members, to be applied in dividends in reduction of their assessments in accordance with the terms of the contract which provided that all members who have completed their Safety Fund deposit five years previously are entitled to participate in the dividends from the income and accretions.

Q. What do you mean by accretions? A. I mean deposits to the fund after it reached its limit of $1,000,000 par value.

Q. The contract provides that not only the income of the fund, but after the fund reaches $1,000,000 par value all further payments by members to that fund shall be used in reduction by way of dividend credits on the assessments levied against members? A. As well as the income; yes.

Q. Is the paper which I now hand you and which will be marked "Exhibit FF", a statement of the income and accretions received by the defendant company from the Security Company and the disbursements thereof by way of dividend credits to members? A. It is.

The defendant offers paper referred to in evidence,

which is hereto attached and marked "Defendant's Exhibit FF", as follows:

**DEFENDANT'S EXHIBIT "FF".**

| Year | Income and Accretions Rec'd from Security Company | Disbursements |
|---|---|---|
| 1886..... | $ 12,675.44 | $ 12,676.44 |
| 1887..... | 12,082.19 | 11,976.28 |
| 1888..... | 14,507.58 | 14,668.72 |
| 1889..... | 16,214.71 | 16,214.71 |
| 1890..... | 17,328.91 | 17,328.91 |
| 1891..... | 25,111.60 | 24,840.35 |
| 1892..... | 29,542.05 | 29,402.17 |
| 1893..... | 39,589.58 | 39,909.77 |
| 1894..... | 46,378.02 | 45,999.24 |
| 1895..... | 95,156.67 | 95,189.82 |
| 1896..... | 84,131.22 | 84,770.84 |
| 1897..... | 70,265.98 | 69,375.93 |
| 1898..... | 79,415.12 | 79,166.24 |
| 1899..... | 71,642.81 | 71,085.94 |
| 1900..... | 46,795.37 | 46,352.13 |
| 1901..... | 54,571.17 | 54,929.24 |
| 1902..... | 46,633.02 | 47,697.40 |
| 1903..... | 50,546.03 | 51,232.07 |
| 1904..... | 42,081.07 | 40,722.54 |
| 1905..... | 40,869.20 | 41,464.92 |
| 1906..... | 41,975.96 | 44,499.00 |
| 1907..... | 39,395.14 | 42,002.27 |
| 1908..... | 60,286.74 | 36,730.08 |
| 1909..... | 39,288.95 | 38,802.13 |
| Balance Dec. 31, 1909 | | 19,447.39 |
| | $1,076,484.53 | $1,076,484.53 |

| | | |
|---|---|---|
| Balance undistributed Dec. 31, 1909 | $19,447.39 | |
| Dividend Distribution, Call 126 (Jan. 28, '10), among members Men's Division holding $27,171,750 of indemnity | | $19,020.70 |
| Retained in dividend account to cover dividends previously declared on policies where the time for payment of a call was extended | | 426.69 |
| | $19,447.39 | $19,447.39 |

Q. Does the second column show the amount of income and accretions received by you year by year from the Security Company? A. It does.

Q. And does the second column, all except the last item, which reads, "Balance December 31st, 1909", show the amounts actually paid out by you by way of credit in reduction of the assessments levied against the members of the Safety Fund Department, Men's Division? A. It does.

Q. On December 31st, 1909, there was a balance as shown by this tabulation in your hands of $19,447.39. Is that correct? A. It is.

Q. Now, what was done with that balance during January, 1910? A. During January, 1910, that balance, $19,020.70, was apportioned to the certificate holders whose certificates were then in force and who had completed their deposit five years previously, as a credit to be used in the reduction of their assessments due March 1st, when they were paid.

Q. That $19,447.39 was divided by what number to

ascertain that apportion? A. By the number of one thousand dollar certificates in force December 31st, 1910, who were entitled to participate in the dividends, which was 27,171¾.

Q. The total amount of insurance then in force in the Men's Division of the Safety Fund Department entitled to participate in the distribution of that fund, was how much? A. Twenty-seven million, one hundred seventy-one thousand seven hundred fifty dollars.

Q And dividing that sum into $19,447.39 gives you what result? A. You don't divide it that way; you divide the number of thousand of insurance.

Q. Well, the number of thousands of insurance was 27,171¾, and dividing 27,171¾ into $19,447.39 gave you what result? A. Seven hundred fifteen thousands or 71.5 cents per thousand dollars of insurance.

Q. And you actually apportioned as a dividend on call 126 how much per thousand of insurance? A. seventy cents.

Q And what is the item on Exhibit "M", being the notice of mortuary call 126, as pertains to policy 174416, which reads, "Dividend to be applied if payment made, $1.40"? A. That is the dividend apportioned to that certificate in the tabulation Exhibit "FF".

Q. And that amount, $1.40, is twice the dividend on policy 128293 because the policy is for $2,000, whereas the other policy is for $1,000? A. That is right.

Q. Twenty-seven thousand one hundred seventy-one and three-fourths multiplied by 70 gives you the item 19,020.70, which is the last figure but two in the

outer right-hand column of Exhibit "FF"? A. That is right.

Q. And is the sum of the dividend of 70 cents per thousand credited to that amount of insurance? A. That is right.

Q. Now, deducting $19,020.70, which was the amount apportioned from the 19,447.39, which was the balance you then had in hand, leaves a difference of $426.69, which was retained in the dividend fund in January, after the apportionment of the dividend on call 126? A. That is right.

Q. Now, for what purpose was that $426.69 retained? A. It was not apportioned, but was retained in the dividend account to cover dividends previously declared on certificates on which an extension of time had been granted for the payment of previous calls.

Q. Except for the balance thus retained, was all the money which you had theretofore received from the Security Company distributed, paid to or apportioned to members by way of dividends on their assessments? A. Yes, sir; every cent.

Q. I wish you would examine Exhibit "P", being copy of certificate register as it relates to Frank Barber's policy 174416, and in the same way explain the figures on that record beginning with 1903. A. The first column in which there are figures refers to the call due December 1st, 1907, and the figures 1.50 represent the amount of the expense dues, .21 the amount of the taxes assessed and $8.61 the amount of the Mortality Call. The figures to the left in red ink, 12-20, indicate that the call was paid and that it was checked upon the register on the 20th day of December, 1907. The figures in the next column refer to the call due March 1st, 1908. The

figures 1.50 represent the amount of the expense dues, .22 the amount of the taxes assessed and 9.18 the amount of the Mortality Call. The figures below "cr. .50" indicate that the member paid .50 more than was necessary on the previous call and that this .50 was credited to him in reduction of this call. The figures 3-12-08 below, show that the registered second notice was sent to the member on March 12, 1908. The figures in red ink to the left, 3-24, indicate that the call was paid and the payment checked on the register as March 24, 1908. The figures to the right, D 1.20, represent a dividend of 1.20 allowed in reduction of this call. The figures in the next column refer to the call due June 1st, 1908, 1.50 being the amount of expense dues, .24 the amount of the tax assessed and $10.88 the amount of the mortality call. The figures 6-13-08 indicate that the registered second notice was sent to the member on the 13th day of June, 1908. The figures in red ink to the left, 6-20, show that the payment was made and that it was checked upon the register June 20, 1908. The figures in the next column refer to the call due September 1st, 1908, 1.50 being the amount of the expense dues, .24 being the amount of the tax assessed, $10.32 the amount of the mortality call, and the figure below, "Cr. .50", indicates that the previous call was overpaid .50 and that amount was allowed in reduction of this call. The figures in red ink to the left, 9-5, show that the call was paid and that the payment was checked upon the books September 5, 1908, the figures to the right, D 1.20, shows that a dividend of 1.20 was allowed in reduction of this call. The figures in the next column refer to the call due September 1st, 1908, 1.50 being

the amount of expense dues, .22 the amount of the tax assessed and $9.92 the amount of the Mortality Call. The figures in red ink to the left show that the call was paid and that the payment was checked on the books the 5th day of December, 1908. The figures in the next column refer to the call due March 1st, 1909, 1.50 being the expense due, .13 the amount of the tax assessed and 11.30 the amount of the Mortality Call. The figures, 30-09, below, show that the notice was sent January 30, 1909. The figures in red ink to the left, 3-5, show that the call was paid and the payment checked on the books March 5, 1909. The figures to the left, D 1.30, show that a dividend of 1.30 was allowed in reduction of this call as a dividend from the Safety Fund. The figures in the next column refer to the call due June 1st, 1909, 1.50 being the amount of the expense dues, .13 the amount of the tax assessed and 11.30 the amount of the Mortality Call. The figures below, 1-09, show that the notice was sent May 1st, 1909. The figures to the left, 6-5, in red ink, show that the call was paid and the payment checked on the books June 5, 1909. The figures in the next column refer to the call due September 1st, 1909, 1.50 being the amount of the expense dues, .13 the amount of the taxes assessed, and 11.30 the amount of Mortality Call. The figures 2-09 indicate that the notice was sent on August 2nd, 1909. The figures to the left in the square, 9-14-09, indicate that the registered second notice was sent on September 14, 1909, and the figures, 9-21, to the left, show that the payment was made and that payment was checked upon the books September 21, 1909. The next column refers to call due September 1st, 1909, 1.50 being the amount of

tne dues, .15 the amount of the tax assessed and 13.09 the amount of the mortality call, and the figures below, 1-09, show that the notice was sent November 1st, 1909. The figures to the left, in red ink, 12-6, show that the payment was made and that it was checked upon the books December 6, 1909, and the figures to the right, Cr. .50, show that the previous call was overpaid .50 and that that amount was credited in reduction of this call.

The figures in the next column refer to call due **March 1st, 1910, $1.50** being the amount of the dues, 15 cents the amount of the tax assessment, $13.09 the amount of the mortality call, and the figures below, 29-10, show that the notice was sent January 29th, 1910, and the figures to the left, 11-10, show that the registered second notice was sent March 11, 1910. The figures to the right, D.1.40, show that a dividend of $1.40 had been apportioned to this certificate on this call, to be allowed in reduction of same if it were paid. In the next column appears an item of $1.50 crossed out. This was the amount of the dues that would have been charged on the call due June 1st, 1910, had the certificate been in force on that date and not lapsed for non-payment of the call due March 1st, 1910. This figure and the figure in the next column, 1.50, also ruled out, were filled in, the dues being constant, for the sake of clerical convenience.

Q. Do the months at the heads of the several columns from which you have been reading have any relation to the record whatever? A. They do not.

Q. The record is made, notwithstanding the dates of the month inserted at the top of the column in print? A. That is true.

Q. On Exhibit "P" there is no record after the last memorandum, "Notice sent January 29, 1910," except the red ink endorsement to the left thereof, which reads "Registered Notice 3-11-10"; is that correct. There is no record of any payment made on this policy after those dates? A. The last record of any payment made was the record of the call due December 1st, 1909, which the record shows in red ink to have been paid December 6th, 1909.

Q. To the right of the columns in which the records are contained from which you have just been reading there are certain blanks, are there not? A. Yes; there are blanks beyond the record of the call due March 1st, 1910, for non-payment of which the certificate lapsed.

Q. And these blanks are intended to record what? A. They were intended to record the calls due June 1st, 1910, and September 1st, 1910, had the certificate been kept in force.

Q. And there is no record made in those columns of any payment beyond the payment which you have read? A. No; there is no record of any payment beyond that of call due December 1, 1909. There is a record of the amount that was assessed on call due March 1st, 1910, but that was not paid.

Q. Were any assessments levied against either of these policies after the record of the levy of the assessment known as mortuary call 126, dated January 29, 1910? A. There were not.

Q. Opposite each of the preceding assessments on these records there appears in red ink certain figures as, for instance, opposite the immediately preceding assessment, the red ink record, 12-06, and opposite the next preceding record, 9-21, being in each in-

stance in red ink, and you have testified that those are the records of the fact that the assessment referred to had been paid and is a record of the dates when they were checked up? A. That is right.

Q. Now, is there opposite the record with respect to mortuary call 126, a notice of which was sent January 29, 1910, being the last record on Exhibit "P" in red ink entry, indicating the date when payment was made and checked up? A. There is not, as payment was never made.

Q. Did you during March, 1910, receive through the mail a paper purporting to be signed by Frank Barber, the original of which I now show you and a copy of which will be marked "Defendant's Exhibit GG"? A. We did.

Defendant offers copy of paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit GG", as follows:

**DEFENDANT'S EXHIBIT "GG".**

(Copy)

The Hartford Life Insurance Co.,

Gentlemen: Will you please inform me whether or not you have a better policy than the two which I have? Since I wrote you in December in regard to the increase of assessment, to which your answer is at hand, I have given my insurance matter a very serious thought. I came across a statement a few days ago, from May, 1906; after carefully reading it over the thought arose in my mind, "Can it be possible that after paying for nearly 20 years it is simply a matter of who dies first, the Company or the Policyholder?" As I do not wish to drop my policy, I

would like to hear from the Company. Hoping you will favor me with an early reply, I am,

Respectfully yours,

Frank Barber,

4201 Pleasant Str. St. Louis, Mo.

Q. And did you make reply thereto as per copy of your letter to Frank Barber dated March 12, 1910, which copy is now before you? A. We did.

Defendant offers copy of letter referred to in evidence, which is hereto attached and marked "Defendant's Exhibit HH", as follows:

**DEFENDANT'S EXHIBIT "HH".**

(Copy)

March 12, 1910.

M-T

Mr. Frank Barber,
4201 Pleasant St.,
St. Louis, Mo.

Dear Sir:

Replying to yours without date, we have to advise you that this Company has since the year 1899 issued nothing but Old Line Legal Reserve Level Premium Insurance. There is no way in which certificates 128293 and 174416 on your life could be changed to any other form of insurance than that on which they were originally written. You could, of course, apply for new insurance in this Company, and we will be glad, indeed, to consider your application.

As for the condition of the Company, we would state that the Company is in a stronger financial condition than ever before. The statement of the condi-

tion of the Company as of December 31st last is now in the press. When it is received from the printer we will take pleasure in forwarding you a copy.

Very truly yours,

T. F. Lawrence,

Secretary.

Q. Was the original of that mailed to Frank Barber? A. It was, on March 12, 1910.

The Court here takes a recess until tomorrow morning at 9 o'clock.

Thursday, November 21.

Mr. Morrow: I will withdraw every objection I made from now on to the testimony of Lawrence in his deposition. And the plaintiff withdraws every objection made to the deposition of Lawrence as now being read from page 61 to the end of the deposition, but I don't want to withdraw some of the objections I made yesterday to the testimony.

Q. Is the paper which I now show you a record of the tabulation compiled from your records of the dividends allowed to Frank Barber from time to time and in each of the years therein recited, on his certificate 174416? A. It is a copy of the records of the dividends so allowed him.

Defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit JJ", as follows:

**DEFENDANT'S EXHIBIT "JJ".**

Certificate No. 174416 on Life of Frank Barber.
Dividends in Reduction of Calls.

| Call Due | Amount of Dividends |
|---|---|
| March 1st, 1901 | $1.00 |
| Sept. 1st, 1901 | 1.50 |
| March 1st, 1902 | 1.14 |
| September 1st, 1902 | 1.24 |
| March 1st, 1903 | 1.34 |
| September 1st, 1903 | 1.40 |
| March 1st, 1904 | 1.10 |
| September 1st, 1904 | 1.20 |
| March 1st, 1905 | 1.30 |
| September 1st, 1905 | 1.20 |
| March 1st, 1906 | 1.40 |
| September 1st, 1906 | 1.50 |
| March 1st, 1907 | 1.20 |
| September 1st, 1907 | 1.30 |
| March 1st, 1908 | 1.20 |
| September 1st, 1908 | 1.20 |
| March 1st, 1909 | 1.30 |
| September 1st, 1909 | 1.20 |
| Total | $22.72 |

Q. And the amount of dividends allowed and credited to him in reduction of assessments on certificate No. 174416 was how much? A. Twenty-two dollars and seventy-two cents.

Q. And those dividends so allowed and credited to him constitute a part of the disbursements from the

income and accretions received from the Security Company as shown by Exhibit "FF" heretofore introduced in evidence? A. They do.

Q. The paper which I now show you and which will be marked Exhibit "KK" is a certified copy, is it not, of the act of the General Assembly of Connecticut, approved April 10th, 1889? A. Yes. It is a copy of House Joint Resolution No. 176, of the General Assembly, State of Connecticut, approved April 10th, 1889.

Q. And relates to the Safety Fund investment? A. Yes; it relates to the investment of the Safety Fund by the Security Company, the trustee of the Fund.

Defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit KK", as follows:

**DEFENDANT'S EXHIBIT "KK".**

State of Connecticut.
Office of the Secretary.

General Assembly, January Session, A. D. 1889.
(House Joint Resolution No. 176.)

(178)

Authorizing the Security Company to Make Certain Investments of Trust Funds.

Resolved by this Assembly: That the Security Company, a corporation located in Hartford, be and it is hereby authorized to invest the funds known as the Safety Fund, which it now holds or may hereafter receive from the Hartford Life and Annuity Insurance Company, a corporation also located in said Hartford, under a contract between

said companies dated the thirty-first day of December, 1879, in trust for the benefit and security of certain holders of certificates of membership in said Hartford Life and Annuity Insurance Company, in such other securities, in addition to United States bonds, as the life insurance companies of this state are by law authorized to invest in, instead of being compelled to invest all said funds in United States bonds as specified in said contract; provided such investments of said funds in other securities than United States bonds shall be made with the consent and approval of said Hartford Life and Annuity Insurance Company; and, provided, further, that nothing in this resolution shall be so construed as in any way to vary, alter or change the purposes, conditions or stipulations of such trust as set forth in said contract, except as to the kind of securities in which the same may be invested.

Approved, April 10, 1889.

State of Connecticut, } ss.
Office of the Secretary. }

I, Matthew H. Rogers, Secretary of the State of Connecticut, and keeper of the seal thereof, and of the original record of the acts and resolutions of the General Assembly of said state, do hereby certify that I have compared the annexed copy of the resolution authorizing the Security Company to make certain investments of trust funds with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I further certify that the said original record is a public record of the said State of Connecticut, now remaining in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said state, at Hartford, this tenth day of September, 1912.

Matthew H. Rogers,
(Seal) Secretary.

Q. Into what fund did the moneys received from assessments levied against and paid by the members of the Safety Fund Department, Men's Division, go when they were received? A. Into the Mortuary Fund of the Men's Division of the Safety Fund Department of the company.

Q. Who held the Mortuary Fund, being the proceeds of the assessments levied against the members of the Safety Fund of the Men's Division? A. The Hartford Life Insurance Company held that fund, to be used for the settlement of death claims only on certificates of the Men's Division of the Safety Fund Department.

Q. And where was that fund kept? A. That fund was kept, a small part of it in cash, in the company's office, and the balance in banks subject to check for the settlement of death losses.

Q. And the part of the fund that was in the bank was in whose name? A. In the name of the Hartford Life Insurance Company Safety Fund Department, Men's Division.

Q. And was withdrawn therefrom on whose check? A. On the check of the Hartford Life Insurance Company, signed by two officers of the company, in settlement of death claims, daily or as they were paid.

Q. Now, what became of the contributions to the Safety Fund, being the ten-dollar payments, or installments, thereof, provided by the Safety Fund contract? A. They were all deposited by the Hartford Life Insurance Company in the Security Company in accordance with the terms of the trustee's contract before mentioned in this testimony.

Q. And held by the Security Company in whose name? A. Held by the Security Company, trustee for the members of the Safety Fund of the Hartford Life Insurance Company, Men's Division.

Q. And subject to check, if at all, by whom? A. By the Security Company.

Q. Was the Safety Fund at any time subject to the check of the Hartford Life Insurance Company? A. It never has been, no.

Q. Now, all your questions and answers heretofore have related to the Safety Fund Department and the Men's Division of the Safety Fund Department, have they not? A. They have.

Q. You also had another department in your business known as the Women's Safety Fund Department? A. We did.

Q. When was that department established? A. That department was established in 1882 and prior to that time the women had been accepted as members of the department referred to in the testimony as the Men's Division of the Safety Fund Department, but in 1882 a separate division, called the Women's Division, was established, which also established a separate Safety Fund in accordance with the terms of a trustee's contract, which was dated the 30th day of June, 1882, and thereafter all women were accepted as members of the Women's Division of the Safety

Fund Department and all men as members of the Men's Division of the Safety Fund Department. The two divisions were kept entirely separate after that time, the deposits to the Men's Division going into the Safety Fund of the Men's Division, and the deposits of the Women's Division going into the Safety Fund of the Women's Division. They were also kept entirely separate in all other respects, the members of the Men's Division being assessed only for death losses occurring on members of that division, and the members of the Women's Division being assessed only for death losses occurring on members of the Women's Division. The assessments paid by members of the Men's Division went into the Mortuary Fund of the Men's Division, and the death losses of the Men's Division were paid out of the Mortuary Fund of the Men's Division. The assessments paid by members of the Women's Division went into the Mortuary Fund of the Women's Division, and the death losses of the Women's Division were paid out of the Mortuary Fund of the Women's Division.

Q. The terms and conditions under which the Security Company held the Safety Fund of the Men's Division appears in the copy of the contract attached to the policies in suit to which we have heretofore referred, does it not? A. It does.

Q. Now, the terms and conditions under which the Safety Fund in the Women's Division was credited and held by the Security Company appear by the contract dated June 30th, 1882, relating to the Women's Division, does it not? A. It does.

Q. Is the paper designated "Trustee's Contract", appearing on the third page of the paper which I now show you, headed "Hartford *Life* and Annuity

Insurance Company policy, Women's Division", a corect copy of the contract between the Hartford Life Insurance Company and the Security Company with respect to the Safety Fund of the Women's Division? A. It is.

Defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit LL", as follows:

**DEFENDANT'S EXHIBIT "LL".**

This exhibit is a form of policy in the "Women's Division", upon the third page of which appears the following Trustees' Contract:

**Trustees' Contract.**

This Agreement, made and entered into this thirtieth day of June, A. D. 1882, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; Witnesseth:

Whereas, the party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Women's Division of the Safety Fund System, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund in connection therewith, to enter into sundry agreements with such persons in the following words, to wit:

"That said Company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with them (of which a copy is printed hereon and made a part of this contract), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1882, if said Safety Fund shall then amount to seventy-five thousand dollars, or whenever thereafter said sum shall be attained, make a semiannual distribution of the net interest received therefrom by it, *pro rata* among all the holders of Certificates in force in said division at such times who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to two hundred and fifty thousand dollars, all subsequent receipts therefor shall be distributed by the said Company in like manner as the interest.

"Said Company further agrees that if at any time, after said Fund shall have amounted to seventy-five thousand dollars, or after five years from January 1, 1883, if that amount shall not have been attained before the expiration of that period, it shall fail by reason of insufficient membership to collect the necessary sum by assessment to make full payment of the maximum amount named in any Certificate issued in said division, and such Certificate, after demand upon said Company, shall be presented for payment to said Trustee by the legal holder thereof (within the time herein stipulated for limitation of action), or, if after the expiration of said period, a final judgment shall have been obtained in any court of

competent jurisdiction upon a claim arising under any such certificate, satisfaction of which shall have been neglected or refused for the period of sixty days from the decree thereof, then in either of such cases it shall be the duty of said Trustee to at once convert said Safety Fund into money and distribute the same (less the reasonable charges and expenses for the management and safe keeping of said Fund) among the holders of all Certificates then in force in said division, or their legal representatives, in the proportion which the amount contributed to said Fund upon each of said Certificates shall bear to the whole amount of said Fund; and that in such event it shall file with said Trustee a correct list, under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such distribution.

"And said Company further agrees that so long as any Certificate of membership in said division shall remain in force, said Fund shall be in nowise chargeable or liable for any use or purpose except as above mentioned."

Now, therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the party of the second part and in accordance with its agreement with its Certificate holders, as hereinbefore recited, does hereby appoint the party of the second part Trustee as aforesaid and covenants and agrees with them and their successors in said trust to deposit with said Trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every certificate of membership issued by it in the aforesaid division until said Fund shall amount to

two hundred and fifty thousand dollars, to be by said Trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expense of said trust, to be paid over to the party of the first part, as hereafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements: And when said Trustee shall pay the income, as above, to the party of the first part, or shall make any other payments from said Fund, as required by the terms hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

And the party of the second part, for themselves and their successors, in consideration of such deposits and of a reasonable compensation for their services, and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors and with each of the holders of the aforesaid Certificates that they will receive, hold, manage and dispose of all said deposits made with them by the party of the first part, principal and income, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders.

That, as often as possible, said Trustee shall make investments of such funds in such securities as the statutes of the State of Connecticut shall permit to be made by life insurance companies, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund

and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1882, or until such time thereafter as such Fund shall amount to seventy-five thousand dollars, par value, of the securities purchased for said Fund, and shall pay over to the party of the first part, semiannually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall amount in such securities, at their par value, to two hundred and fifty thousand dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund into money and distribute the same in accordance therewith as soon thereafter as it can reasonably be done.

All payments required hereby to be made to the party of the first part, to cease upon the aforesaid failure or neglect of the party of the first part; and all payments required herein to be made to the Certificate holders by the party of the second part, to be made at the office of said Trustee or of the successor in said trust.

The necessary expenses connected with the management of said Fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned securities, together with the cost of the stationery and postage used in replying to requests for information

of the condition of said Fund, which replies shall be made by the Trustee to any person entitled to request the same by reason of an interest therein, and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expense to be included in and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with the Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership issued by the party of the first part in the aforesaid division have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

And it is further understood and agreed that the securities, investments and moneys composing said Fund shall at all reasonable times be subject to inspection by the Insurance Commissioner of the State of Connecticut, and by the proper officers of the Insurance Departments of all states where certificate holders may be obtained; and to inspection by the party of the first part, who shall keep the party of the second part correctly informed of the names,

addresses, numbers and amounts of Certificates of all persons who shall contribute to said Fund.

And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second party shall surrender said Fund to such successor.

In Witness Whereof, the party of the first part has affixed hereto the corporate seal of said Company, and caused these presents to be signed by its President and Secretary. And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands. Done at Hartford, in the State of Connecticut, the day and year first above written.

Hartford Life and Annuity Ins. Co.,
(Seal) By Frederick R. Foster, President,
and Stephen Ball, Secretary.

Security Company,
(Seal) By Robert E. Day, President,
and William L. Matson, Treasurer.

Q. Now, then, in the Women's Division, did you have a mortuary fund created by assessments levied on the members of that division? A. We did.

Q. And with respect to what you have designated as your seven-year contract, stipulated premium contract, being forms 3½ and 4, did you accumulate and hold in a separate fund, from time to time, the difference between the death losses on these policies and the premiums or stipulated payments which they paid during the first seven years? A. We did as to the form 4, yes; on the form 3½ we had a separate account and have a separate account for the payments made by those certificate holders, charging against them the payments stipulated in their contracts, including their assessments to the mortuary fund, holding the balance in the account.

Q. Does the paper which I now show you, and which will be marked "Exhibit MM", is it a tabulation from your record of the balance on hand in several funds referred to, to wit, the Men's Mortuary Fund, the Women's Mortuary Fund, and the Stipulated Premium Fund that you have last described, on the last day of each year, beginning December 31, 1900, and running down to and including 1909? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit MM", as follows:

**DEFENDANT'S EXHIBIT "MM".**

| | | |
|---|---|---|
| Dec. 31, 1900 | Men's Mort. ..... | $ 89,461.38 |
| | Women's Mort. ..... | 21,903.20 |
| | Stip. Prem. ..... | 228,484.41 |
| | | $339,848.99 |
| | Error ..... | 1,866.37 |
| | | $341,715.36 |

| | | |
|---|---|---|
| Dec. 31, 1901 | Men's Mort. ..... | $ 88,868.99 |
| | Women's Mort. ..... | 43,858.98 |
| | Stip. Prem. ..... | 224,292.62 |
| | | $357,020.59 |
| | Excess of assessments in course of Coll..... | 21,550.00 |
| | | $378,570.59 |
| Dec. 31, 1902 | Men's Mort. ..... | $126,858.76 |
| | Women's Mort. ..... | 41,622.73 |
| | Stip. Prem. ..... | 184,159.43 |
| | | $352,640.92 |
| Dec. 31, 1903 | Men's Mort. ..... | $136,450.23 |
| | Women's Mort. ..... | 66,139.79 |
| | Stip. Prem. ..... | 101,791.81 |
| | Int. Bnk. Bal..... | 1,710.16 |
| | | $306,091.99 |
| Dec. 31, 1904 | Men's Mort. ..... | $207,748.77 |
| | Women's Mort. ..... | 68,695.14 |
| | Stip. Prem. ..... | 46,759.70 |
| | Int. Bnk. Bal..... | 1,112.65 |
| | | $324,316.26 |

| | | | |
|---|---|---|---|
| Dec. 31, 1905 | Men's Mort. | | $103,919.88 |
| | Women's Mort. | | 74,881.63 |
| | Stip. Prem. | | 46,508.67 |
| | Int. Bnk. Bal. | | 243.84 |
| | | | $225,554.02 |
| | D. Claims | | 4,166.67 |
| | | | $221,387.35 |
| Dec. 31, 1906 | Men's Mort. | | $163,927.48 |
| | Women's Mort. | | 51,049.84 |
| | Stip. Prem. | | 38,430.30 |
| | | | $253,407.62 |
| | Death Claims | $4,166.67 | |
| | Div. Over-paym. | 1,885.72 | 6,052.39 |
| | | | $247,355.23 |
| Dec. 31, 1907 | Men's Mort. | | $224,392.04 |
| | Women's Mort. | | 65,398.70 |
| | Stip. Prem. | | 37,278.07 |
| | | | $327,068.81 |
| | Death Claims | $1,166.67 | |
| | Div. Over-paym. | 4,533.20 | 5,699.87 |
| | | | $321,368.94 |

| | | |
|---|---|---|
| Dec. 31, 1908 | Men's Mort. ..... | $ 99,309.31 |
| | Death Claim ..... | 166.67 |
| | | $ 99,142.64 |
| | Women's Mort. ..... | 66,387.65 |
| | Stip. Prem. ..... | 38,737.46 |
| | | $204,267.75 |
| Dec. 31, 1909 | Men's Mort. ..... | $ 74,938.92 |
| | Death Claim ..... | 166.67 |
| | | $ 74,772.25 |
| | Women's Mort. ..... | 84,155.38 |
| | Stip. Prem. ..... | 39,685.89 |
| | | $198,613.52 |

Q. On December 31, 1909, what was the balance in the Mortuary, Fund, Men's Division? A. Seventy-four thousand nine hundred and thirty-eight dollars and ninety-two cents.

Q. Was there a past due and outstanding claim against that fund? A. There was a death claim amounting to $166.67, which was overdue and unpaid and had been for some years, for the reason that the beneficiary had disappeared and could not be found. As that death claim was overdue and had been assessed for, and as the unpaid amount had been charged in the company's statement as a liability December 31, 1909, as against the Mortuary Fund, the actual balance in the Mortuary Fund, as reported in the company's statement December 31, 1909, was reduced by that amount.

Q. Now, according to your records, a copy of which you have here, the balance in the Men's Mortuary Fund was on that date how much? A. The amount shown in Exhibit "MM".

Q. The words "Men's Mort." as they appear on this Exhibit "MM" indicates what—what fund? A. They indicate the balance in the Men's Mortuary Fund.

Q. Now, the words "Women's Mort." indicate what? A. The balance in the Women's Mortuary Fund.

Q. And the words "Stip. Prem." indicate what? A. Indicate the balance in the Stipulated Premium Fund.

Q. About when was it that the Safety Fund in the Men's Division of the Safety Fund Department aggregated $1,000,000 par value? A. At the end of the year 1893.

Q. And has it ever exceeded $1,000,000 par value? A. Never.

Q. After it reached $1,000,000 par value what was done with the contributions of the ten-dollar payments or installments thereof that were paid by the members to the Hartford Life Insurance Company? A. The Hartford Life Insurance Company has always sent those contributions to the Security Company, and the Security Company, after the fund reached its limit of $1,000,000 par value, returned those deposits made to the fund, together with the income, to be allowed to the members as reduction of dividends in accordance with the Trustees' Contract.

Q. And on Exhibit "EE" it appears that the Hartford Life Insurance Company deposited with the Security Company a total of $1,290,113, and the

excess of the amount so paid Hartford Life Insurance Company to the Security Company, after the Safety Fund in the Men's Division reached $1,000,000 par value, came back to the Hartford Life Insurance Company how and when? A. It came back in semi-annual payments by the Security Company at the same time that they paid the income of the fund, and went on to the Safety Fund dividend account of the Hartford Life Insurance Company, to be apportioned and paid to the members of the Men's Division, Safety Fund Department of the Company, in accordance with the terms of the Trustees' Contract.

Q. And was all of the money so received, being both the income as well as the payments to the *corpus* of that fund, after it exceeded $1,000,000, when thus returned by the Security Company to the Hartford Life Insurance Company, in fact distributed in dividends to the members? A. Yes, it was all apportioned to the members with the exception of a balance shown on an exhibit which has previously gone into this case, was all paid to the members.

Q. What was the balance undistributed December 31, 1909? A. The balance on December 31, 1909, undistributed, was $19,447.39. Of that $19,039.70 was apportioned in reduction of call due March 1, 1910; all of the income and accretions of the Safety Fund received from the Security Company applicable to dividends to members of the Men's Division of the Safety Fund Department either has been so paid to them or is held in account apportioned and to be paid to them.

Q. By the terms of the Trustees' Contract concerning the Safety Fund, Women's Division, of date the 30th day of June, 1882, the limit of the fund therein

fixed is $250,000. Will you please state whether the Safety Fund in the Women's Division has ever exceeded $250,000? A. It not only has never exceeded $250,000, but it has never reached it; it never has reached $150,000 par value.

Q. By the terms of the Trustees' Contract concerning the Safety Fund, Men's Division, a copy of which contract appears on the certificates in suit, it is provided that that fund shall be invested in United States bonds. Was that fund always invested in United States bonds? A. It was until after the passage of the Act of the Legislature of 1889, a copy of which act has been introduced in this case as an exhibit. After that time it was not invested in United States bonds, but in investments which were legal for life insurance companies under Connecticut laws.

Q. Was the subject of the Safety Fund, Men's Division, the subject of litigation in this State in the case known as Dresser and others against the Hartford Life Insurance Company?

Mr. Morrow: I object to that; the record is the best evidence.

A. It was.

Q. I hand you two papers, which will be marked, respectively, "Exhibits NN and OO", the first being a copy of decision and decree entered in the Dresser case by Judge Shumway, and the second being copy of a decision and decree entered in the Dresser case by Judge Curtis, both of which have been certified by the Clerk of the Court, and ask you whether those are copies of the decrees entered in that case? A. They are.

The defendant offers papers referred to in evidence, which are hereto attached, the copy of decision and

decree by Judge Shumway being marked "Defendant's Exhibit NN", and the copy of decision and decree by Judge Curtis being marked "Defendant's Exhibit OO", as follows:

(Defendant's Exhibits "NN" and "OO" are exemplified copies of the decisions and decrees in the case of *Dresser et al.* v. Hartford Life Insurance Company *et al.*, rendered by Judges Shumway and Curtis, copies of which decisions and decrees appear in this abstract as Exhibits "B" and "C" to the answer.)

Q. When in the ordinary course of business would the payment of the substance or the bulk of Mortuary Call 126 be made, Mr. Lawrence? A. Between March 1st and March 15, 1910.

Q. Under the terms of the contracts and notice, the date of the call being January 29, 1910, the last date for payment provided in the call was what date, regardless of any provisions for extension? A. March 5, 1910, except for those residing west of Salt Lake, Utah, in which case the date was March 15, 1910.

Q. On the back of Exhibits Nos. "L" and "M", being the notice of Mortuary Call 126, appears the following: "Special Notice. If the payment of the above quarterly call is not received at this office on or before March 5, 1910, the last day allowed for payment of the above notice, a second notice will be mailed to the policyholder by registered letter, giving until March 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, 50 cents." Did that endorsement go to all the members of the Safety Fund on that notice? A. To every one.

Q. And had that provision for the payment within

fifteen days after the last due day been a rule of the company of long standing?

Mr. Morrow: I object to that; the rule is the best evidence.

A. It had.

Q. And was that rule thus allowing fifteen days additional, printed on the back of all of the notices sent to members on their several assessments for a number of years? A. That rule allowing fifteen days for unconditional reinstatement, upon the payment of fifty cents additional, had been; yes.

Q. And the only place that it appears is on the back of the notice, as it appears on the back of this notice? A. That is the only place that it appears in writing, in present usage; yes.

Q. Did it appear anywhere else in writing? A. It appeared in a circular letter. My recollection is that at the time the rule was adopted a circular letter was sent to all the certificate holders.

Q. Well, the terms and conditions of the rule appear in the endorsement which I have just read? A. They do.

Q. Was it pursuant to that rule that you sent to Barber in these cases the two registered letter notices about which you have testified? A. It was.

Q. The call here in question, being mortuary call 126, of January 28th, was payable March 1st or March 5th, as recited in the notice. When, according to the terms of the certificates in suit, would the next assessment following call 126 be levied? A. The next call would be levied on conditions existing March 31st, 1910, and would be levied May 2nd, 1910; that is, the notice would be dated that date and it would be due June 1st, 1910.

Q. And the returns of that call, the substance or bulk of the returns of that call, would come in about what date? A. From the first to the fifteenth of June.

Not being able to complete the taking of said deposition by reason of the lateness of the hour, I adjourn the further taking of the same until Wednesday, September 18th, at 9:30 a. m.

Nellie W. Annis,
Notary Public.

Pursuant to adjournment, as above stated, on the 18th day of September, 1912, at the hour of 9:30 a. m., I continued the taking of said deposition as follows:

Thomas F. Lawrence, in continuation of his deposition commenced on the 17th day of September, A. D. 1912, on his oath further says:

Q. After the passage of the Act of the Legislature, which is offered in evidence as Exhibit "KK", you testified yesterday that the Safety Fund was invested by the Security Company in such class of securities as the laws of the State of Connecticut provided might be proper for the investment of insurance companies. Just what class of securities was the fund invested in after that date? A. In railroad and municipal bonds and some mortgage loans.

Q. Can you tell me what the effect upon that fund was with respect both to its reaching the maximum sum of one million dollars par value, at an earlier or later date by investment in that class of funds instead of United States bonds, and also the effect upon the income of that fund? A. The fund, by reason of being invested in such securities as were legal

for life insurance companies, rather than United States bonds, reached its limit of one million dollars par value very much earlier than would have been the case had it remained in United States bonds. The income has been very much larger from the fund than it would have been if invested in United States bonds.

Q. Why was it that it reached its maximum of one million dollars par value at an earlier date when invested in one class of securities than it would have reached that sum if it had been invested in United States bonds? A. Because United States bonds command a high premium, and it would have taken a much greater book value or amount of deposits to reach the par value of one million dollars in United States bonds than if invested in other securities which did not have to be purchased at such a high premium.

Q. Do you know what the premium was at this time on United States bonds? A. Not without looking it up.

Q. Do you know what the interest rate of United States bonds was? A. I think about 3 per cent.

Q. And what was the interest rate on the municipal, railroad and other bonds in which insurance companies were authorized to invest, as compared with the interest rate on United States bonds? A. About 5 per cent as compared with 3 per cent.

Q. You have said that you did not know what the premium on United States bonds was in 1889 or 1890. Can you tell us about what it was? A. It was about 20 per cent; in fact, it was more than 20 per cent.

Q. You have testified that the interest rate on these

municipal, railroad and other bonds was about 5 per cent as compared with 3 per cent on Government bonds. Do you know what the effect of that has been on the dividends paid to the members of the Men's Division of the Safety Fund Department, and, if so, state what the effect was? A. I do; the effect was a benefit to the members of the Safety Fund Department, Men's Division, as they received the interest in the form of dividends, and the interest from 1889 to 1890, after the fund was invested in other securities than United States bonds, was in excess of $200,000 more than it would have been if the fund had remained in United States bonds. The members of the Men's Division were also benefited by this change because of the fact that the fund reached its limit of one million dollars par value sooner than it would have done had it remained in United States bonds, and therefore the deposits which would have gone to pay premiums on United States bonds were returned by the Security Company to the Hartford Life Insurance Company and applied in the form of dividends.

Q. On December 31st, 1909, the only funds held by the Hartford Life Insurance Company appertaining to the Safety Fund Department was the Mortuary Fund of the Men's Division, the Mortuary Fund of the Women's Division, and your Stipulated Premium Fund, and the balance then to the credit of the Dividend Account; is that correct? A. Well, there was an addition to these accounts an Advance Payment Account, where members had overpaid their assessments or deposited money with us to be applied on future assessments.

Q Which advance payment account you held to the

credit of individual members? A. We held it to their credit, and it was on our books as a liability.

Q. The Security Company paid over to you the income of the Safety Fund how often? A. Semi-annually.

Q. On what dates? A. Recently on the 30th of June and the 31st of December. Prior to a few years ago it was paid on the 2nd of January and the 1st of July.

Q. Did the payments of the income by the Security Company to the Hartford Life Insurance Company on those dates include the payments of ten dollars per thousand made by the members, after the Safety Fund reached a million of dollars in par value of the securities in which it was invested? A. It did.

Q. And did you receive a payment of income from such income and accretions from the Security Company December 31st, 1909? A. We did.

Q. In Exhibit "FF" you show an apportionment of $19,020.70 by way of dividends applicable on mortuary call 126. Did that apportionment include the amount which you had received from the Security Company on December 31st, 1909? A. It did.

Q. Now, those stipulated premium policies, are they capable of and do you charge against them the legal reserve calculated on that form of policy in your statements? A. We do on the stipulated premium policies or on the policies of the Stipulated Premium Department, which are legal reserve policies and require the carrying of a legal reserve.

Q. Your stipulated premium fund, did that include both reserve on those policies and a surplus on those policies in addition to the reserve? A. Yes, it did.

Q. Did the regular Safety Fund policies in the

Men's Division of the Safety Fund Department carry any reserve? A. Absolutely none.

Q. And the only policies in that department which did carry any reserve were what? A. Were policies which by their terms were legal reserve policies. There are only two or three policies in force now in that department which carry a reserve and are either ten or twenty payment life policies.

Q. No reserve was charged on any policies except where policies contained a level or stipulated premium? A. That is right.

Q. When you apportioned your dividends by way of credit on each succeeding assessment levied against your policyholders in the Safety Fund Department, Men's Division, would all of the assessments so levied be paid and all of the dividends thus applied by way of credit be used in reduction of assessments, or would there be some of the policies which would lapse and thus the amount of dividend apportioned to them would not be used in reduction of their assessments? A. Always on every call some of the policies would lapse, and have lapsed in the past, and therefore the amount of dividends apportioned to those policies is not taken in reduction of the assessment, but remains in the dividend account.

Q. And what is done with the amount thus apportioned, but unused from time to time? A. Well, it remains in the fund, and the next date of receipt of income and accretions from the Security Company the balance remaining is added to the income and accretions and that balance is apportioned in reduction of the next call.

Q. In Exhibit "FF" the balance in the dividend account on December 31, 1909, is shown to be 19,-

447.39. Did that balance include all the dividends theretofore apportioned to your members and not used by them in reduction of their assessments? A. Yes.

Q. And of that balance then on hand you apportioned at that time $19,020.70; is that correct? A. That is right.

Q. Did the company in any way realize any profit from the failure from time to time of the members to use or apply their dividend in reduction of their assessments? A. Absolutely none.

Q. Did you on each of the mortuary calls levied in this department assume a lapse ratio similar but differing in amount from the percentage of lapse assumed on mortuary call 126, which was 2.47 per cent? A. We did.

Q. And that lapse ratio varied in amount from time to time? A. Yes.

Q. And on each call? A. Yes.

Q. Now, where the lapse ratio actually experienced was less than the lapse ratio assumed, what was the effect with regard to the amount received on that call as compared with the amount for which that call was levied? A. In that case we would receive on that call more than the amount for which the assessment was levied.

Q. What became of that excess? A. Why, that excess—all of the money received on that mortuary call would go into the mortuary fund for the settlement of death losses, and the excess would remain in that fund to be used for that purpose and that purpose only—settlement of death claims.

Q. Has it always remained there? A. Always.

Q. Now, where the lapse actually experienced on a

given call was greater than the lapse rate assumed, what would be the effect on the amount of money actually received on the call as compared with the amount which was expected to be received by the call? A. The effect in that case would be that we would receive less in the way of assessments for the mortality call than the amount for which we had assessed, the amount of death losses included in the assessment.

Q. But the proceeds of the assessment, though for a lesser amount, would go into the mortuary fund? A. Yes; the proceeds of all assessments go into the mortuary fund; that is, that part of the assessment which is for mortality purposes.

Q. Now, these quarterly dues of $1.50 in one policy and 75 cents in the other policy for dues, did that go into the mortuary fund? A. No; never.

Q. What became of that money for dues? A. It went directly to the stock department.

Q. And from what fund were the death losses in the Men's Division of the Safety Fund Department paid? A. From the Mortuary Fund of the Men's Division.

Q. Are the death losses in the Men's Department of the Safety Fund paid from the proceeds or any particular call or from the balance on hand in the mortuary fund from time to time? A. Not from the proceeds of any particular mortuary call, but from the balance in the mortuary fund at the time that the death losses are paid.

Q. You have testified that the mortuary fund is deposited in banks in the City of Hartford. Do the banks pay any interest on the balances in that fund from time to time? A. They do.

Q. And what is done with the interest that is received from the banks on those balances? A. It goes into the Mortuary Fund of the Men's Division.

Q. As a credit to that fund? A. Yes, sir.

Q. You have testified that in 1899 you ceased to write new business in the Safety Fund Department. Will you please state why that was? A. It became practically impossible to write the business. In the early 90's many assessment companies and associations failed, and for that reason and also for the reason that the legal reserve companies were conducting a campaign of advertising in favor of legal reserve insurance, assessment insurance became very unpopular, and there was legislation in several states resulting from the unpopularity, which made it practically impossible to write the business. Four or five states, I think, prohibited writing assessment business entirely, but at any rate it was so unpopular that it was practically impossible to write it.

Q. Had there been prior to that time a great many assessment insurance companies? A. Yes, a very great many.

Q. Do you know of any company that is now operating under the assessment plan? A. I don't know of any. The Bankers Life Insurance Company of Des Moines, Iowa, operated until recently, but I think during the last year they have gone over to the legal reserve plan.

Q. Whose particular duty was it to cause to be prepared and sent out the notices to members in the Men's Division of the Safety Fund Department in 1909? A. The duty of Mr. C. W. Benton, the cashier of the company.

Q. Under your supervision? A. Yes.

Q. Is Mr. Benton in the city now? A. He is not, he is away on his vacation and will not be back until week after next.

Q. And what was the total amount of Barber's payment to the company for the Safety Fund deposit on account of his policy 174416? A. Twenty dollars.

Q. Do you knew when the funds in which the Safety Fund, Men's Division of the Safety Fund Department, reached the limit of the par value of $1,000,000 of securities in which it was invested? A. It was either in December, 1893, or the very first part of 1894. I testified yesterday that it was the end of 1893.

Mr. Jones: Reserving the right to further examine the witness as to any matters which I may have overlooked, you may, Mr. Morrow, proceed with the cross-examination, but I want to add here that if there are any books, papers or records of the company, in the company's possession, that you want, they may be produced right here, we will be very glad to get them for you.

Mr. Morrow: I thank Mr. Jones very kindly for that, but I prefer that he offer the copies of any records that he thinks necessary in this case so that I may inspect them, as I am a stranger here and am in a hurry and cannot very well go into an accounting of their books.

**Cross-Examination**, by Mr. Morrow.

Q. How long have you been connected with the Hartford Life Insurance Company and the corporation that operated under the different name before that? A. Since June 1, 1903.

Q. What did you first do for this corporation? A.

I came here in a clerical capacity, June 1st, 1903, and handled various clerical work in the office.

Q. What did you first do? A. Well, I first had in charge the matter of policy loans, in the stock department.

Q. How long did you do that work? A. I did that work personally, revising the system and doing the work, probably six months.

Q. Then what did you do? A. Then, in December, 1903, I was made assistant secretary of the company, and after that time my duties were executive.

Q. And what particular duties did you perform as assistant secretary? A. I had charge of the office force and the office routine and signed various papers as an officer of the company.

Q. You looked after correspondence, too? A. Yes, the correspondence.

Q. The fact is, after you became assistant secretary you didn't do the drudgery of the working on the books of the company, carrying out figures and things of that kind? A. No; it was all done under my supervision; I didn't personally do the work.

Q. You didn't personally do it yourself? A. Yes; that is right.

Q. And neither did you personally fill out what you called death rolls or assessment calls after that time? A. By death calls what do you mean?

Q. Notice of assessment. A. No; I didn't personally; it was done under my supervision.

Q. I mean, while you were in charge of the department you actually didn't do the work yourself? A. No.

Q. You had other and more important duties to perform in connection with your office as secretary,

didn't you? A. I had no more important business than supervising that work.

Q. But necessarily the business was so large you had to intrust that to clerks under you? A. That is right.

Q. That has been true all the way along, hasn't it? A. Yes; my work has been done by clerks under my supervision.

Q. And it is true now? A. Yes; it is true now.

Q. Now, the Hartford Life Insurance Company, under any name that it has ever gone, has been what is called a stock corporation? A. It has.

Q. What is its captial stock? A. At the present time $500,000.

Q. What was it in 1890? A. In 1890 I am quite sure it was $250,000.

Q. That stock if it declares a dividend, the dividend is paid to the holders and owners of the stock? A. Yes.

Q. And not to what you call members in the Safety Fund Department? A. No.

Q. Now, the profit derived from this stock, if any, in the Safety Fund Department came from what source? A. There was no profit derived from this stock in the Safety Fund Department.

Q. Well, did the corporation receive any revenue from the members of the Safety Fund Department? A. It did; it received the expense dues stipulated in the Safety Fund Contract.

Q. And the company kept those dues whether or not it exceeded the account stipulated? A. Yes, those were paid to the company in consideration of its paying the expenses.

Q. Now, you say there was no profit to the stock-

holders? A. I didn't say so; I said there was no profit derived from the stock in the Safety Fund Department.

Q. It was run practically for a number of years as a Safety Fund Insurance Company because you did no other business except that class of business? A. Well, at the time that the company was writing Safety Fund business there was in force old legal reserve business which had been written prior to 1880, and there was a Stock Department of the company in which that legal reserve business was carried.

Q. Since you established the Safety Fund Department, away back in 1879 or 1880, you have issued in that department to men a number of different forms of policies, have you not? A. We have; different forms of certificates we call them.

Q. I use the term policy as indicating the same thing that you do by certificate. Now, can you approximate how many different forms were used during that period? A. Well, by forms exactly what do you mean?

Q. I mean just what I say. A. I should say about ten forms.

Q. Well, as a matter of fact, wasn't it about thirty? A. No, sir.

Q. Well, there might have been twenty or thirty? A. No, there were not. There were probably thirty to thirty-five different editions of certificate forms used in the Safety Fund Department, and those editions, a great many, were just reprints for the changing of two or three words, but really no change in the form or the manner in which the certificates would be treated. In saying ten different forms I mean dif-

ferent forms of certificates, which differ in their terms and in their method of treatment as to payments.

Q. You simply draw the conclusion, now, that they didn't differ materially in legal effect, although they differed in language? A. I know some of them did not differ at all and that they did not differ as far as we treated them by their terms.

Q. Have you furnished Mr. Jones with all these different forms of certificate that you issued? A. I have not, in this case.

Q. Well, why did you furnish him with simply these four particular forms out of something like twenty or thirty? A. I furnished him with those four particular forms out of ten forms because they were editions of the only forms which were included in and affected in any way the assessments.

Q. You left it to yourself and to Mr. Jones to determine whether or not they in any way affected the rights of the other members issued under different forms? A. Why, yes; and my knowledge of how the different forms affect the assessments in the membership in the Safety Fund Department.

Q. How many different forms of certificates were issued in what you term the regular department of the Men's Safety Fund Department? A. You are calling forms what I call editions.

Q. You spoke of a great many forms yesterday, and you called them Form 3, Form 3½ and Form 4, and for that reason I thought I could refer to them as forms. A. I am differentiating between forms and editions. Form 3 and Form 3½ and Form 4 are by their terms treated in a different form from the original Safety Fund certificates; in that way we call them forms, and I call them forms now, but when you ask me

now for all of the forms among the original Safety Fund certificate holders, we consider them all one form. There were editions of that form, but all treated exactly the same, and in that way are one form.

Q. How many different editions did you issue in the Men's Safety Fund Department, of what you call the regular form, that differed from each other, that you treated in the same class and the members as the same? A. I couldn't give you the exact number now, but I should say, ten. If you would like the exact number I can find it for you.

Q. And the wording and the English of these forms were different? A. Yes, in some cases, and in some cases only reprints.

Q. But you or the Company determine in its own mind that the difference was not sufficient to in any way affect the members, and they treated them all alike? A. Yes, treated them all in accordance with their terms.

Q. Now, about how many of those contracts or certificates did you issue after you issued the Barber certificates? A. Of the original Safety Fund certificates? I don't think any; I think the next editions were on the Form 3, Form 3½ and Form 4.

Q. When did you commence to issue Forms 3½, 3 and 4? A. Eighteen ninety-four.

Q. Well, the Barber certificates were written in 1890 and 1891, I believe? A. Certificate 128293 on Barber's life was issued in 1890 and certificate 174416 on Barber's life was issued in 1893.

Q. Now, what do you call the form of 1890 similar to the one the Barber certificate was written on?

A. I call that an original Safety Fund Certificate on the edition of August, 1888.

Q. Now, did you ever issue a different edition of that original Safety Fund Certificate between 1890 and 1893? A. I don't think so.

Q. You don't know, now? A. No.

Q. Did you ever look to see? A. No, not for that particular reason. Probably I have looked to see from some reason. In looking over things in the past I have been over all editions of the Safety Fund Department. I have been over them hundreds of times, probably; read them all through and familiarized myself with them.

Q. Now, as to the Exhibit "B" and "C", which purport to be applications; when did you first see those papers, and where? A. To the best of my recollection I probably saw those applications in March, 1910, when Frank Barber wrote to us and we replied to him. I am not sure that I did at that time, but I am quite sure that I did, and that I answered his letter, and if that is the case, those applications were put on my desk on my requisition, from the files.

Q. When you stated to Mr. Jones that those were the papers on which those particular certificates were issued you simply concluded yourself that was true because you found them with the papers? A. Yes, because they were brought from our vault, where the original files are kept. Those are the foundation of our business; those are very carefully kept.

Q. You, of course, had no personal knowledge of the transaction yourself? A. Of the issuing of the certificate?

Q. Yes; the receipt of the application. A. At that time, no.

Q. You have none now? A. Only that the application is in our vault, where it has been kept ever since first received except when it has been taken out on my requisition.

Q. You have no personal recollection now about the receipt of that application at the office? A. No; I wasn't there then.

Q. Either the first application or the last application? A. No.

Q. You don't personally know anything about the issuance of the certificates on either application? A. From our records I do.

Q. I am asking personally. A. No; I wasn't there at the time.

Q. From your testimony I gather that you first issued what you called an original or regular Safety Fund certificate? A. That is right.

Q. And that later on you issued a different form of certificate in the Men's Department, called sometimes in the evidence here, seven-year certificates? A. Yes, Form 4 certificates were seven-year certificates.

Q. Those seven-year certificates were what you have talked about here this morning as being a certificate of stipulated premiums? A. Yes, stipulated premium certificates for seven years.

Q. But you put them in with the Men's Division of the Safety Fund Department and worked them right along together, didn't you? A. When?

Q. From the time you issued them? A. Yes, they contained a copy of the trustee's contract of the Men's Division, and that contract provided for their

paying $2.00 a year to the Safety Fund, which they did, so that they deposited $14.00 per thousand of insurance to the Safety Fund, whereas the original certificate holders in the Safety Fund deposited only $10.00, and all of that $14.00 went to the holders of the original certificates because the Safety Fund was completed in 1894. These certificates not being issued until 1894, and the fund being complete, the accretions to the fund were returned to the company and apportioned to it by dividends the same as the income.

Q. Did any of the holders of those seven-year certificates die within the first year after you had commenced to issue them? A. They did.

Q. How much did the men pay who died the first year, into the Safety Fund? A. Two dollars.

Q. What became of that $2.00? A. Like all deposits to the Safety Fund, it went to the Security Company as soon as received.

Q. Did that person participate in the earnings of the Safety Fund Department? A. By earnings, do you mean income of the Safety Fund?

Q. Yes. A. They did in accordance with the terms of the trustee's contract, which provided that all members should participate in the income and accretions of the Safety Fund five years after completing their deposits. As it took them seven years to complete their deposits, they did not commence to participate until fourteen years from the date of issuing.

Q. But, as I understand, they did participate in the interest received from the million dollars? A. No, sir; not until the end of fourteen years. The contract provided that no one should participate in the dividends from the income of the Safety Fund De-

partment until five years after the completion of the deposit on the particular certificate.

Q. Were those two-dollar payments deposited with the Security Company immediately upon receipt of them? A. Yes.

Q. Was any interest earned upon that? A. Those payments were sent to the Security Company and returned by the Security Company in stated semi-annual periods to us and were immediately apportioned as dividends in addition to the income.

Q. Those two-dollar payments on those seven-year certificates? A. Yes, sir.

Q. What did you do with that two-dollar payment? A. Sent it to the Security Company as a deposit to the fund.

Q. Then it was sent back to you? A. Yes, sir.

Q. Then what did you do? A. Apportioned it to the certificate holders whose certificates were in force and who had completed their Safety Fund deposits five years previous to that date, and so were entitled to participate in the apportionment of dividends from the Safety Fund income.

Q. About how many thousand dollars worth of insurance was written on this seven-year plan? A. I couldn't tell you that, without consulting the records.

Q. When did you commence writing them? A. Eighteen ninety-four.

Q. When did you quit writing them? A. Eighteen ninety-nine.

Q. Five years? A. Running for five years.

Q. When you had to make up the assessment on this seven-year policy between the years 1894 and 1899 what did you take into consideration? A. There

was no assessment on the seven-year certificates until the end of the term of seven years.

Q. Was there a surplus or a deficit in that particular department covering those early years from that stipulated premium? A. There was a surplus.

Q. What became of that surplus? A. I read into the record yesterday the provision in that contract which provided for the payment of the mortality on those seven-year certificates during the seven years. The surplus was applied in reduction of assessments on those seven-year certificates after the end of the seven years when they paid regular assessments to the Safety Fund Department, and that surplus has been applied in that way.

Q. I didn't ask you what you read in the record yesterday. I asked you what became of that surplus. I wish you would state that to me. A. That is what I say. It was applied in accordance with the terms of the contract in reduction of assessments as they became due and paid on those seven-year certificates after the end of the term of seven years when they would be assessments in the Safety Fund Department.

Q. How much of that surplus did you pay out the first year? A. I could only answer that by consulting the records.

Q. Then you personally don't know at this time? A. No; but I can furnish the information very easily by consulting the records.

Mr. Jones (Q.): And are you ready to consult the records if Mr. Morrow desires you to? A. I will be very glad to. We haven't any records here that we are not very glad to produce and let Mr. Morrow see and give him all the information of the office.

Q. The form of certificate issued to the women was always the same form? A. No.

Q. How many different forms of certificates did you issue to the women after that division was established? A. I should say ten.

Q. You have produced one and designated it Exhibit "LL?" A. That is right.

Q. After the seven-year period did you treat all the certificate holders or members of the Men's Safety Department alike? A. I don't believe I could answer that question that way. If you ask me if they were treated the same as the original or regular certificate holders I could answer the question by stating that they were treated exactly alike, except that the new or higher table of rates was used in computing their assessments and computing ratio, so that the effect upon the original or regular certificate holder was to lower the ratio, and therefore the assessments by reason of the fact that these seven-year certificate holders paid a higher table of rates.

Q. Did they pay the same dues? A. They did not. They paid the dues stipulated in the contract.

Q. But how did you apportion the expense of carrying on the business between those different certificate holders? A. We didn't apportion the expense of carrying on the business between these different certificate holders; the certificate contracts provided for certain expense dues to be paid to the company in consideration of which the company was to pay all the expenses, which was done.

Q. Well, but you actually did take on another class after the issuance of those regular certificates and carry them along for a cheaper quarterly due than you did the others? A. No; their dues were higher.

Q. What were the quarterly dues on these seven-year certificates? A. One dollar for one thousand dollars of insurance, as compared with seventy-five cents on the original safety fund certificates.

Q. Well, there were some other expenses, I understood you to say yesterday, that were charged on assessments? A. I remember testifying to charging taxes on assessments.

Q. Is that all? A. That is all I recollect testifying to.

Q. Is that all the expense that was ever attached to the carrying on of this business except the quarterly dues? A. The question is not clear. The dues are not expenses; they are payments provided by the contract to be paid to the company in consideration of which the stock department pays the expenses of carrying on the business. The taxes are, in a way, expenses, and those are assessed in accordance with the contract and paid from the Safety Fund Department as they are demanded by the State Insurance Department?

Q. What I mean is, was there any other money exacted from the members other than the assessment for Mortuary Call and quarterly dues and taxes? A. There was not.

Q. Yesterday, when you testified that these certificates differed from each other, you meant that the language and effect of the certificates were different A. Yes; that they differed in their terms and provisions.

Q. Did you ever write a policy on the life of a woman after 1880, before, you say, there was a contract made with the Security Company about a Woman's Department? A. We did.

Q. What became of them? A. Why, they became members of the regular Safety Fund Department, which was established in 1880, when they came in before 1882, and remained members of that division in accordance with the terms of the contract, that being what we designated Men's Division of the Safety Fund.

Q. Then the Men's Division of the Safety Fund Department had women in it? A. It did; women whose certificates were issued prior to the establishment of the separate Women's Division.

Q. You don't know how many women were members of that department? A. No; I don't, but I could find out by an inspection of the books.

Q. And so, when you talk about a men's department and a women's department, you have reference to certain certificate forms that were issued to them, and not with reference to the sex? A. Well, the division in which they are is determined by their contracts, and since 1882 by the sex. Since 1882 all men on whose life certificates have been issued have become members and have certificates issued to them in the Men's Department, and all women who have certificates issued to them in the Women's Department of that company. Prior to that time all women who have certificates issued were issued in the Men's Division of the Safety Fund Department of the Company and remained members of that division.

Q. That Exhibit "K" that you took out of the book I want you to get for me. (Mr. Lawrence gets book.) You now have before you the original of Exhibit "K" in book form? A. That is right.

Q. Exhibit "K" is a copy of the record with reference to assessment 126? A. Yes.

Q. Who made the figures on this book, the pages with reference to call 126, from which you say Exhibit "K" was taken? A. clerk in the actuary's department.

Q. You didn't see him make them? A. I saw him make the figures on the fourth page after the total assessment of one table rate on the form 3½ certificates.

Q. When did you see him do that? A. At the time he did it.

Q. When was that? A. In January, 1910.

Q. What day in January? A. I couldn't tell you now.

Q. About what time? A. I don't know; within the first five or six days of the month of January.

Q. You testified yesterday that assessment 126 was made to cover a number of death claims which you stated were set out in Exhibit "N". Have you any original memorandum of releases or receipts, or otherwise, to show the exact date of the payment of those claims or any of them? A. We have records and checks and receipts.

Q. How many, if any, do you know of the claims contained in Exhibit "N" were paid before you sent out the notices for assessment 126? A. I couldn't tell you that without consulting the records.

Q. About how many? A. Any answer I might give to that question would be a guess.

Q. I would like for you to give your best recollection; that is what I want. A. Well, the only way I could answer that question would be to go down and make an examination of the death claim register and find out the dates on which those various death claims were paid.

Q. Don't you know as a matter of fact that a number of them had been actually paid and settled before you sent out the notices for assessment 126? A. Yes, I know that.

Q. What proportion? A. I could only tell you as a guess.

Q. Turn to Moses S. Austin. (Mr. Lawrence has produced claim register.) The date of death is February 13, 1907. State when that claim was paid. A. That claim was paid September 29, 1909; $3,000.

Q. Please turn to your record and state at what date the claim of Benjamin F. Saunders was paid and the amount paid. A. That claim was paid December 24th, 1909; $10,000.

Q. Please state at what date the claim of Otis M. Dye was paid and the amount paid. A. That claim was paid November 2, 1909; $10,000.

Q. Please state at what date the claim of K. H. Barnes was paid and the amount paid. A. That claim was paid November 19, 1909; $1,000.

Q. Please state at what date the claim of M. W. Smith was paid and the amount paid. A. That claim was paid November 19, 1909; $1,000.

Q. Please state at what date the claim of John F. Devine was paid and the amount paid. A. That claim was paid December 6, 1909; $5,000.

Q. Please state at what date the claim of Royal I. Loveridge was paid and the amount paid. A. That claim was paid September 22, 1909; $1,000.

Q. Please state at what date the claim of Chas. H. Morgan was paid and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of D. C.

Boutzahn was paid and the amount paid. A. That claim was paid November, 1st, 1909; $2,000.

Q. Please state at what date the claim of Thos. K. Lagare was paid and the amount paid. A. The correct name is Thomas Legare, and that claim was paid December 6, 1909; $3,000.

Q. Please state at what date the claim of Samuel McBlack was paid, and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of H. D. Wood was paid, and the amount paid. A. That claim was paid October 26, 1909; $1,000.

Q. Please state at what date the claim of F. S. Crawley was paid, and the amount paid? A. That claim was paid December 27, 1909; $1,000.

Q. Please state at what date the claim of C. H. Nolting was paid, and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Thos. H. Davey was paid, and the amount paid. A. That claim was paid December 6th, 1909; $1,000.

Q. Please state at what date the claim of John Zech was paid, and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of T. F. Calvin was paid, and the amount paid. A. That claim was paid December 29, 1909; $1,000.

Q. Please state at what date the claim of Leopold H. Cohen was paid, and the amount paid. A. That claim was paid November 22, 1909; $8,000.

Q. Please state at what date the claim of Patrick Sweeney was paid, and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Jas. A.

Creighton was paid, and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Henry Berkle was paid, and the amount paid. A. That claim was paid November 17, 1909; $2,500.

Q. Please state at what date the claim of Fred Bisping was paid, and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Henry D. Jarrett was paid, and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of B. F. Pickett was paid, and the amount paid. A. That claim was paid October 27, 1909; $1,000.

Q. Please state at what date the claim of Simon Abler was paid, and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Chas. E. Stevens was paid, and the amount paid. A. That claim was paid November 4th, 1909; $4,000.

Q. Please state at what date the claim of C. R. Strong was paid, and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Wm. L. McCabe was paid, and the amount paid. A. That claim was paid October 14, 1909; $1,000.

Q. Please state at what date the claim of G. J. Green was paid, and the amount paid. A. That claim was paid December 3, 1909; $5,000.

Q. Please state at what date the claim of John M. Patton was paid, and the amount paid. A. That claim was paid December 14, 1909; $2,000.

Q. Please state at what date the claim of A. A.

Albritton was paid, and the amount paid. A. That claim was paid December 14, 1909; $1,000.

Q. Please state at what date the claim of Jacob A. D. Myers was paid, and the amount paid. A. That claim was paid December 6th, 1909; $2,000.

Q. Please state at what date the claim of W. A. Lester was paid, and the amount paid. A. That claim was paid December 23, 1909; $1,000.

Q. Please state at what date the claim of Wm. H. Benanson was paid, and the amount paid. A. That claim was paid December 4, 1909; $2,000.

Q. Please state at what date the claim of Alex Neubecker was paid, and the amount paid. A. That claim was paid November 1st, 1909; $2,000.

Q. Please state at what date the claim of Emil Berggren was paid, and the amount paid. A. That claim was paid November 19, 1909; $1,000.

Q. Please state at what date the claim of Henry Sandhoff was paid, and the amount paid. A. That claim was paid November 1st, 1909; $1,000.

Q. Please state at what date the claim of Albert C. Eaton was paid, and the amount paid. A. That claim was paid November 3, 1909; $1,000.

Q. Please state at what date the claim of Hawson H. Wallace was paid, and the amount paid. A. That claim was paid December 30, 1909; $6,000.

Q. Please state at what date the claim of Adam Eppel was paid, and the amount paid. A. That claim was paid December 1st, 1909; $1,000.

Q. Please state at what date the claim of Lucien Love was paid, and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of Jas. P.

Reilley was paid, and the amount paid. A. That claim was paid December 1st, 1909; $1,000.

Q. Please state at what date the claim of Wm. H. King was paid, and the amount paid. A. That claim was paid November 17, 1909; $1,000.

Q. Please state at what date the claim of Isaac Meinhard was paid, and the amount paid. A. That claim was paid December 4, 1909; $10,000.

Q. Please state at what date the claim of Cyrus C. Marsh was paid, and the amount paid. A. That claim was paid December 29, 1909; $4,000.

Q. Please state at what date the claim of William Bright was paid, and the amount paid. A. That claim was paid December 1st, 1909; $5,000.

Q. Please state at what date the claim of Alfred M. Botsford was paid, and the amount paid. A. That claim was paid December 9, 1909; $1,000.

Q. Please state at what date the claim of Jas. B. Bunn was paid and the amount paid. A. That claim was paid November 29, 1909; $1,000.

Q. Please state at what date the claim of Lewis Raymond was paid, and the amount paid. A. That claim was paid November 2, 1909; $2,000.

Q. Please state at what date the claim of Patrick Fahey was paid, and the amount paid. A. That claim was paid November 2, 1909; $2,000.

Q. Please state at what date the claim of Wm. J. Allen was paid, and the amount paid. A. That claim was paid December 3, 1909; $3,000.

Q. Please state at what date the claim of Bernard Hasler was paid, and the amount paid. A. That claim was paid December 4, 1909; $500.

Q. Please state at what date the claim of Albert F.

Jones was paid, and the amount paid. A. That claim was paid October 22, 1909; $1,000.

Q. Please state at what date the claim of Moses C. Harrixon was paid, and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Edw. T. Houghton was paid, and the amount paid. A. That claim was paid February 16, 1910; $2,000.

Q. Please state at what date the claim of Jacob Wasen was paid and the amount paid. A. That claim was paid October 5, 1909; $2,000.

Q. Please state at what date the claim of Frederick A. Becker was paid and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of R. B. Moodie was paid, and the amount paid. A. That claim was paid October 13, 1909; $2,000.

Q. Please state at what date the claim of Giles F. Van Vechter was paid, and the amount paid. A. That claim was paid October 28, 1909; $5,000.

Q. Please state at what date the claim of C. I. White was paid, and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of G. H. Allen was paid, and the amount paid. A. That claim was paid December 28, 1909; $2,000.

Q. Please state at what date the claim of Peter Cavagna was paid, and the amount paid. A. That claim was paid February 8, 1910; $5,000.

Q. Please state at what date the claim of Jerome B. Nichols was paid, and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of H. A.

Barton, Jr., was paid, and the amount paid. A. That claim was paid October 21, 1909; $2,000.

Q. Please state at what date the claim of John Loux was paid, and the amount paid. A. That claim was paid December 1st, 1909; $2,000.

Q. Please state at what date the claim of David McLaughlin was paid, and the amount paid. A. That claim was paid December 1st, 1909; $4,000.

Q. Please state at what date the claim of Edw. L. Roberts was paid, and the amount paid. A. That claim was paid December 30, 1909; $1,878.48.

Q. Please state at what date the claim of Louis Gref was paid, and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Wm. T. Perkins was paid, and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Geo. Pfeuffer was paid, and the amount paid. A. That claim was paid July 6, 1910; $1,000.

Q. Please state at what date the claim of Thos. McPheeters was paid, and the amount paid. A. That claim was paid November 29, 1909; $3,000.

Q. Please state at what date the claim of John Colbert was paid, and the amount paid. A. That claim was paid October 25, 1909; $1,000.

Q. Please state at what date the claim of Alfred E. Chambers was paid, and the amount paid. A. That claim was paid November 29, 1909; $5,000.

Q. Please state at what date the claim of P. H. Hull was paid, and the amount paid. A. That claim was paid January 17, 1910; $1,000.

Q. Please state at what date the claim of Wil-

liam T. Leggett was paid, and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of P. P. Toale was paid, and the amount paid. A. That claim was paid January 6, 1910; $5,000.

Q. Please state at what date the claim of Stephen W. Patterson was paid, and the amount paid. A. That claim was paid December 4, 1909; $1,000.

Q. Please state at what date the claim of Ugel E. Rivest was paid, and the amount paid. A. That claim was paid December 28, 1909; $1,000.

Q. Please state at what date the claim of Thos. Buchanan was paid, and the amount. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Caleb A. Post was paid, and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of John W. Kelmly was paid, and the amount paid. A. The name should be Helmly instead of Kelmly, and the claim was paid March 3, 1910; $1,000.

Q. Please state at what date the claim of Edw. Cahill was paid, and the amount paid. A. That claim was paid December 6, 1909; $1,000.

Q. Please state at what date the claim to John A. Bradley was paid, and the amount paid. A. That claim was paid December 29, 1909; $3,000.

Q. Please state at what date the claim of Ransom F. Cowing was paid, and the amount paid. A. That claim was paid December 6, 1909; $2,000.

Q. Please state at what date the claim of Henry Penette was paid, and the amount paid. A. That claim was paid December 20, 1909; $1,000.

Q. Please state at what date the claim of Michael

Gleisner was paid, and the amount paid. A. That claim was paid February 17, 1910; $1,000.

Q. Please state at what date the claim of Lewis J. Brown was paid, and the amount paid. A. That claim was paid December 29, 1909; $1,000.

Q. Please state at what date the claim of Daniel Woerner was paid, and the amount paid. A. That claim was paid February 7, 1910; $2,000.

Q. Please state at what date the claim of William Miller was paid, and the amount paid. A. That claim was paid December 29, 1909; $1,000.

Q. Please state at what date the claim of F. Marcellus Cox was paid, and the amount paid. A. That claim was paid February 28, 1910; $5,000.

Q. Please state at what date the claim of John Davis was paid, and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Charles K. Minor was paid, and the amount paid. A. That claim was paid December 6, 1909; $2,000.

Q. Please state at what date the claim of Justus Pfetzing was paid, and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Oliver Otis Howard was paid, and the amount paid. A. That claim was paid, $5,000 on November 22, 1909, and $5,000 November 30, 1909. The two certificates were to different claimants, I suppose.

Q. Please state at what date the claim of Marcus A. Hunt was paid, and the amount paid. A. That claim was paid December 29, 1909; $5,000.

Q. Please state at what date the claim of Charles H. Oyer was paid, and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Benjamine Berwanger was paid, and the amount paid. A. That claim was paid November 16, 1909; $5,000.

Q. Please state at what date the claim of Jno. F. D. Dettmann was paid, and the amount paid. A. That claim was paid January 14, 1910; $1,000.

Q. Please state at what date the claim of Julius C. Kespohl was paid, and the amount paid. A. That claim was paid December 29, 1909; $2,000.

Q. Please state at what date the claim of Wm. C. Carlisle was paid, and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of Moses Prager was paid, and the amount paid. A. That claim was paid December 30, 1909; $5,000.

Q. Please state at what date the claim of Ulysses F. Moss was paid, and the amount paid. A. That claim was paid February 19, 1910; $7,000.

Q. Please state at what date the claim of Hugh McGinley was paid, and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Albert W. Fisher was paid, and the amount paid. A. That claim was paid March 10, 1910; $5,000.

Q. Please state at what date the claim of Pat'k J. Quinn was paid, and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of John Gilligan was paid, and the amount paid. A. That claim was paid December 30, 1909; $1,000.

Q. Please state at what date the claim of Riley T. Taylor was paid, and the amount paid. A. That claim was paid December 30, 1909; $3,000.

Q. Please state at what date the claim of David U.

Carson was paid, and the amount paid. A. That claim was paid February 28, 1919; $1,000.

Q. Please state at what date the claim of Chas. Weiland was paid, and the amount paid. A. That claim was paid December 30, 1909; $2,500.

Q. Please state at what date the claim of William A. Meroney was paid, and the amount paid. A. That claim was paid December 30, 1909; $2,000.

Q. Please state at what date the claim of T. J. Doak was paid, and the amount paid. A. That claim was paid December 29, 1909; $2,000.

Q. Please state at what date the claim of Otto Buchel was paid, and the amount paid. A. That claim was paid February 18, 1910; $5,000.

Q. Please state at what date the claim of Wm. H. Allen was paid, and the amount paid. A. That claim was paid December 30, 1909; $5,000.

Q. Please state at what date the claim of Erastus Whiton was paid and the amount paid. A. That claim was paid December 14, 1909; $1,000.

Q. Please state at what date the claim of William O. Standish was paid, and the amount paid. A. That claim was paid February 24, 1910; $2,000.

Q. Please state at what date the claim of Chas. A. Steware was paid, and the amount paid. A. That claim was paid February 18, 1910; $2,000.

Q. Please state at what date the claim of John W. Jenner was paid, and the amount paid. A. That claim was paid December 29, 1909; $15,000.

Q. Please state at what date the claim of J. E. Hatcher was paid, and the amount paid. A. That claim was paid February 19, 1910; $1,000.

Q. Please state at what date the claim of Frank

J. Lockwood was paid, and the amount paid. A. That claim was paid February 28, 1910; $1,000.

Q. If I have not made a mistake in the account, all of these claims except fifteen were paid before the sending out of the notice of this assessment. Now, where did the Company get the funds to pay these claims? A. Why, the claims were paid out of the Mortuary Fund, and the funds in the Mortuary Fund were collected by assessment on the members by the death losses.

Q. Now, you didn't have any assessment 126 in your hands before you sent out the notices, did you? A. We did not receive any of it before we sent out the notice.

Q. So that the Company has some funds in its hands that were sufficient to pay and did pay all of those claims except the ones indicated as paid after the notice? A. Yes; those claims were paid out of the Mortuary Fund, as all claims are paid in the Men's Division of the Safety Fund Department.

Q. Do you recall now the exhibit that showed the condition of the Mortuary Fund on December 31st, 1909? A. There are two exhibits that show that, "MM" and "II".

Q. That Mortuary Fund had been reduced on the date of December 31st, 1909, by the payments of these claims that you have indicated were paid before that date? A. Yes; they have been paid out of the Mortuary Fund.

Q. Now, after the payment of all the claims that you say were paid before December 31st, 1909, what was the amount or balance left in the Mortuary Fund for the purpose of paying death claims? A. Seventy-four thousand-odd dollars. I can give you

the exact amount if you will let me look at the exhibit—$74,938.92.

Q. As a matter of fact, when the notices were sent out for this assessment there was sufficient money in the Mortuary Fund to pay every death claim listed in this Exhibit "N", was there not? A. No; there was not.

Q. Well, how much did it lack of being sufficient to pay the claims listed? A. About $250,000.

Q. As I understand from your testimony, you had actually paid all but fifteen of those claims before December 31st, 1909, out of funds in your hands; is that correct? A. That is right.

Q. Then, how did it take $250,000 more to pay those fifteen claims? A. I didn't say it did.

Q. Did it? A. No; it didn't to pay the unpaid ones, but you didn't ask me the question that way. You asked me if there wasn't enough money in the Mortuary Fund on the date of the notice, which was January 29th, to pay all of the claims listed there, which was $352,000, and there was not.

Q. What I aimed to say to you, after you had paid so many of them up to December 31, didn't you actually have enough money as a balance to pay these other fifteen claims at the time you sent this out? A. I couldn't answer that, because I have not before me the balance in the Mortuary Fund January 29; the records only show the unpaid claims that there were on December 31st, and the amount of the Mortuary Fund December 31st.

Q. I understood you to testify on December 31st you actually had a balance in the Mortuary Fund, something over $74,000? A. That is right.

Q. If, as a matter of fact, you had paid all the

death claims listed in Exhibit "N" except fifteen before December 31st, 1909, then the balance on hand of over $74,000, as testified to by you, was sufficient to pay the other fifteen, was it not? A. Yes; if we had deemed it advisable to pay those claims and if papers had been completed so that we could pay them.

Q. What I mean is, you actually had funds in your hands sufficient to pay them? A. Yes; if in the judgment of the officers it seemed best to pay them.

Q. How many kinds of funds have you, with reference to the Men's Safety Department, and I mean, of course, how many had you on December 31st, 1909; that is the time I am inquiring about now. A. Five; not separating the stipulated premium funds.

Q. What did you call them? A. The Mortuary Fund, the Stipulated Premium Fund, the Advanced Payment Fund, the Dividend Fund, and the Tax Fund.

Q. From what source did the money that constituted the Mortuary Fund on that date come? A. From the assessments on the members to pay death losses.

Q. Did any of it come from accumulations and interest? A. Yes, and from the interest on the bank balances to which I testified this morning.

Q. You have referred to an exhibit which you claim showed the condition of the Mortuary Fund as of date December 31st, 1909. A. Yes, Exhibits "II" and "MM."

Q. From this exhibit I notice that you state that on December 31st, 1909, in the Men's Mortuary Fund there was, $74,938.92. A. That is right.

Q. Then you deduct from that, death claims, $166.67, leaving a balance of $74,772.25? A. That is right. The death claim of $166.67 was a death claim overdue and unpaid because the beneficiary was missing. The death claim had been assessed for and collected and it was charged as a liability against the funds, and the balance in the Mortuary Fund was reduced by that amount.

Q. Did you ever pay this $166.67, has it since been paid? A. It has.

Q. Where was this money on December 31st, 1909? A. Most of it was in the Hartford National Bank, the First National Bank, the State Bank, of Hartford, Connecticut.

Q. It was to the account of the Hartford Life Insurance Company? A. The Safety Fund Department.

Q. At that time had you collected the interest due upon moneys from the Security Company? A. Yes, December 31st, 1909, we received from the Security Company interest and accretions on the Safety Fund.

Q. Is that included in this money? A. No sir, it should not be, that is the Mortuary Fund you have there, that is the dividend account.

Q. How much interest did you receive from the Security Company about December 31st, 1909? A. Twenty thousand five hundred odd dollars.

Q. On that date that was available to pay death losses, was it not? A. No sir, it was not. If you will look at Exhibit "FF" you will note that the balance in the Dividend Account on December 31st, 1909, was $19,447.39, although on that date we received from the Security Company 20,500 odd dollars, that balance in the Dividend Account on that date

was not applicable to the payment of death losses, but could only be used in accordance with the terms of the contract in dividends in reduction of the next assessment. That is provided in the trustee's contract, a copy of which is printed and made a part of each certificate.

Q. You had it on hand to reduce the amount of the assessment that much? A. Yes, and as I testified, $19,020.70 of that balance on that date was apportioned to the members as dividends on call 126 due March 1st.

Q. You also had a Mortuary Fund that you call the Women's Mortuary Fund of $84,155.38 on hand? A. We did, that fund being applicable only to the payment of death losses in the Women's Division of the Safety Fund Department, as expressly provided in the contracts of the Women's Division.

Q. You mean by that, that is your construction? A. I mean by that, that is the contract.

Q. But you will have to excuse me, I didn't ask you anything about the contract, I asked you as to the amount you had on hand. You did have that sum of money? A. Yes sir, that is right.

Q. Where was that money? A. On deposit in banks. It was the balance of the Men's Mortuary Fund.

Q. That was to the account of the Hartford Life Insurance Company? A. Yes, Safety Fund deposit.

Q. Now, what is this item that you call stipulated premium of $39,685.89? A. Well, that item is the balance in the Stipulated Premium account, that is, balances that accumulated on Stipulated Premium policies. In that balance are the legal reserve on some Legal Reserve policies of the Stipulated Pre-

mium Department, to which reference has heretofore been made in this deposition, and the surplus on the Form 3½ policies, of the deposits made by the Form 3½ policy holders, to which reference has heretofore been made in this testimony, and dividend surplus on the Form 4 policies, and surplus on some other Stipulated Premium Policies where they made their payment and paid their own mortality.

Q. Did those seven year contracts or certificates enter into this? A. Yes, part of that balance is a balance on account of the Form 4 policies.

Q. In whose hands was that money? A. In banks of Hartford.

Q. To whose account? A. Account of Hartford Life Insurance Company.

Q. How long had you had that money? A. That balance had been created by the payment of premiums on these stipulated premium policies, and there was a balance left after all disbursements had been made, and those payments had been made for a period extending from 1894 to December 31st, 1909.

Q. About what per cent of this money was derived from these seven-year certificates? A. About 70 per cent; that is, roughly speaking; I couldn't tell you exactly without consulting the records.

Q. Did any of that come from those $2.80 deposits which were made each year? A. Not one cent of it.

Q. Did any of it come from interest on that money? A. Yes, the interest on that money was credited to that account and remained in the stipulated premium account. By "that money" I refer to the stipulated premium balance.

Q When you wanted to make out and send out

notices of assessments you never took into consideration the fact that you had sufficient money on hand to pay the claims, did you? A. Why, no; there never being enough money on hand to pay all the claims and keep the Safety Fund Department intact.

Q. In other words, I understand that if you had $100,000 of death claims that had been proven up before you sent out your call, and you only had $90,000 in cash to pay them with, you would still assess and collect the $100,000, the full amount of the claims; was that your custom.

Mr. Jones: I object to the custom. That is a hypothetical case, and is not evidence.

A. We would, yes; the method of conducting our Safety Fund Department is such that it is reasonable and proper for us to have in our mortuary fund at any time an average of the year's assessments, and in the question that you have just asked, I assume that your assumed figures are on the basis of December 31st. If we had $90,000 in the mortuary fund on December 31st, and $100,000 of death losses, we would assess and would have to assess for the full $100,000. That money would come in in March and we would not receive any more money in the Safety Fund Department until June. Now, in addition to the death losses of $100,000, which were on hand and outstanding as of December 31st, we would incur death losses in February and in March, and the contract requires us to pay those death losses within ninety days of the receipt of due proofs of death or the Safety Fund is divided up and the department closed up.

The death losses that would be incurred in the months of January and February would, in the majority of cases, become approved during those months

and we would be required to pay them within the months of April or May, or before the receipt of the next call. It is therefore absolutely necessary that we have a balance in the mortuary fund, and it would be necessary that we assess for $100,000 in our March 1st call.

Q. In other words, you assess and send out notices to collect money to replenish your funds, not to pay death claims? A. That is right. The contract provides that we shall levy assessments to create a mortuary fund for the payment of death losses and that death losses shall be paid from the mortuary fund, and not otherwise.

Q. In this particular instance, assessment 126, as a matter of fact you did send out notices for money as an assessment, not to pay death claims, but to replenish your fund and also to pay death claims? A. No, we levied an assessment for certain death claims, the proceeds of that assessment to go into the Mortuary Fund for the payment of death claims.

Q. Almost all of those death claims had been paid before the assessment? A. In the case of call 126 as shown by the record.

Q. I understood you yesterday to testify that the original of Exhibit "L" was mailed in the post office at Hartford, Connecticut, addressed to Frank Barber, at 4201 Pleasant street, St. Louis, Missouri, on January 29th, 1910. Did you mail that notice? A. I did not.

Q. Did you see anybody mail that notice? A. I did not.

Q. Did you ever see that notice before it was mailed? A. I couldn't say I did or didn't.

Q. In whose handwriting were the blanks filled out?

A. In the handwriting of the person who made out the notice.

Q. In whose handwriting were the blanks filled out in that notice? A. I couldn't state that personally.

Q. Yesterday you took this Exhibit "L" in your hand while you were testifying, and you stated that the original was filled out as in the copy you had before you. How do you know that the original was filled out as you testified yesterday? A. I know that from the records of the company. That information that appears on that exhibit to which you refer is entered on the certificate registers of the company, and the information on the original notice was copied from the original certificate register, as was that exhibit, and that work is done under my supervision by competent clerks. I watch it constantly and keep track of how it was being done and how accurately it is being done, and knowing how accurately the work is done I can testify that I know that is a copy of the original notice that was sent.

Q. But you don't know of your own knowledge that it is a copy of the original notice sent? A. Not from having compared it with the original notice.

Q. You don't know from anything that you have in your recollection or ever saw or knew, do you? A. Only from the records of the company.

Q. Why don't you answer yes or no? You don't know of your own personal knowledge, do you? A. No, only as I have stated.

Q. You don't mean to say that you believe that what you have seen on some books somewhere is your own personal knowledge, do you? A. I know that those figures that are on that exhibit that you hold in your hands are the figures that are on our certificate

register, and I know that the notice was copied from those figures, and I know it was done by competent clerks, and that work is all carefully checked by other clerks so that no error will be made, and I know practically none are made.

Q. That is the reason that you say that this is a copy of something that you never saw? A. That is right.

Q. Now, who filled out these blanks here in Exhibit "L"? A. I think that was filled out by a clerk in the employ of the company named Parker.

Q. You didn't see him do it? A. No; I didn't see him do it, but I have compared that with the register myself, so that I know it is a copy.

Q. Why didn't you, yesterday, when Mr. Jones asked you this question, if you knew who sent out this notice, state that you were talking from something that you had seen on the record? A. I saw no necessity for so stating. I stated what I knew yesterday, and still feel that I know it the same today.

Q. How do you know other than what somebody has told you that there ever was an original notice? A. I know that by the record, which has this information stamped thereon, "Notice sent January 29, 1910," which was put on because notice was sent and by the person who sent it.

Q. That was the record offered in evidence here yesterday? A. A copy of that record was offered in evidence here; yes.

Q. You didn't make that record? A. No; I didn't.

Q. You never saw that record made? A. That particular record; no; I didn't.

Q. When was the first time that you ever saw the particular record that was offered here yesterday

with reference to this claim? A. Undoubtedly at the time that we were first notified that there was likely to be litigation in this case.

Q. About what time was that? A. Some time in the year 1910.

Q. Now, the same is true of Exhibit "M" with reference to policy 174416, as to your testimony as to Exhibit "L", is it not? A. As to the making and sending of the notice; yes.

Q. You don't personally know anything about it? A. Yes; I do personally know about it.

Q. What do you personally know about it, not from records, not from what somebody told you, but personally know about it?

Mr. Jones: I object to that, because knowledge obtained from the records maintained in the regular course of business is personal knowledge.

A. Well, I personally know about it because I have supervision of the department in which those notices are made up. I know with what care they are prepared and sent. I know that the notices on call 126 went out and were received by a large percentage of the membership because they paid that call, practically all of them, there being a lapse of only 2.76 per cent on that call. I know also in March, 1910, Frank Barber wrote a letter to the company about his certificate, and I think undoubtedly that letter was called forth by the receipt of the notice of call dated March 1st.

Q. You honestly think that you have answered my question as to personal knowledge? A. I do; yes.

Q. How do you know that that notice was mailed on the 29th of January? A. I know all the other notices were mailed on that date.

Q. Did you see them mailed? A. No; I did not. I know also that the register says it was mailed on that date.

Mr. Morrow: I move to strike out the answer because it is not responsive to the question. I am not asking anything about what the records show.

Q. How many other notices did you see sent out on the 29th day of January, 1910, with reference to assessment 126? A. I didn't see any of them mailed personally.

Q. Did you see any of them written? A. Yes, I saw a great many written.

Q. Whose did you see written? A. I didn't see any particular one, but being around the office and having supervision of the work which was going on, I knew the notices were being written.

Q. Who did you see writing them? A. Mr. Benton.

Q. Where is he? A. He is cashier. I testified this morning that he is on his vacation. He has this work in personal charge.

Q. How many members were there in the Men's Safety Fund Department at that time? A. About 10,000.

Q. Did you see an envelope on January 29th, or any other time, addressed to Frank Barber, at 4201 Pleasant street, St. Louis, Missouri? A. I did not, to my recollection.

Q. Why did you testify yesterday, when Mr. Jones handed you an envelope and asked you if an envelope similar to that was mailed to Frank Barber on January 29, 1910, why did you say "Yes"?

Mr. Jones: I object to that because no such question was propounded and no such answer was given.

A. No such question was asked me yesterday, to my recollection.

Q. Didn't you testify in substance that the original of Exhibits "L" and "M" were put in envelopes on January 29, 1910, and mailed in the post office, addressed to Frank Barber at 4201 Pleasant street, St. Louis, Missouri? A. I did.

Q. Now, if you never made out this notice, never saw the notice, never saw the envelope, why did you say it was done? A. Because, as I have before testified, I know it was done from our records which show that a notice was sent on January 29, 1909; and being familiar with the records and with the method of the making and mailing of the notices, I am sure that it was sent and that that record is correct.

Q. I understood you to testify yesterday that there was a copy of Exhibit "N" enclosed in the envelope with Exhibits "L" and "M" and mailed to Frank Barber of St. Louis to the address just given? A. I did.

Q. Did you see a copy of Exhibit "N" put in an envelope and addressed and mailed to Frank Barber at St. Louis on January 29, or any other date? A. Not to my recollection.

Q. You have no personal recollection now of having done that yourself? A. No, I haven't.

Q. Or of seeing anyone else do it? A. No, I haven't.

Q. The reason you testified yesterday that that was done was because you say you have examined the record in this office and that shows that was done, is it? A. Yes; because the record shows that that was done and because I know the record would not show

that it was done unless it had been done, knowing the system of the office.

Q. And when you answered these questions yesterday in the affirmative about this notice being mailed and sent, etc., you did it because you had seen a record in the office that you say purported to show that? A. That is correct.

Q. On January 29, 1910, had you been required to pay any taxes to the State of Missouri on premiums in this Safety Fund Department by people who made payments in Missouri? A. We were required to pay them each year. We had paid taxes in 1909 on receipts of 1908, and in 1910 we would make payments on the payments to us of 1909, and in 1911 we would make payments of taxes to the State of Missouri on the payments made to us from the State of Missouri during the year 1910.

Q. Do you know whether it is a fact that on January 29, 1910, that you were required to pay or had paid taxes to the State of Missouri assessed on premiums from persons who held certificates in the Men's Division of the Safety Fund Department? A. Yes, we had paid them in the previous year.

Q. I am talking about this time. A. We hadn't at that time paid any in the year 1910.

Q. Did you pay any at all in the year 1910 on premiums? A. Yes, sir; we did.

Q. How much? A. If you will allow me to consult the records of the company I will tell you exactly.

Q. I will allow you to do anything that you want to.

It is stipulated between the counsel that Exhibits "D" and "C", being respectively the original applications on policy 128293 and policy 174416, may be withdrawn and copies thereof substituted; that the

original exhibits shall be marked by Miss Nellie W. Annis for identification and shall be delivered to counsel for the defendant, to be by him produced at the trial of this cause; the purpose being to use the exhibits for identification at St. Louis prior to trial.

A. And on the 15th day of April, 1910, we paid to the State Treasurer of Missouri, by check, $2,398.93, being tax on Safety Fund assessments. This covered the tax of both the Men's and Women's Division, $2,250.56 being the tax for the Men's Division and $148.37 the amount of the tax paid for the Women's Division.

Q. How many dollars did you collect in Missouri on which this tax was assessed? A. About $112,500. That was assessments collected from the Men's Division in the year 1909.

Q. Was there a tax bill issued to you before you paid this? A. Undoubtedly there was.

Q. That probably would show better than these receipts? A. That is a receipt.

Q. I say, these tax bills that you have would be the best evidence of what tax was paid and the rate and all about it, wouldn't it? A. I don't think so; no, sir. This check states that it is payable to the State Treasurer of Missouri, the amount, $2,398.93. It is for a 2 per cent tax on the Safety Fund collections in 1909, and on the reverse side the endorsement reads, "Received payment in full as specified on the reverse side. Paid Mississippi Valley Trust Company, St. Louis, Missouri, or order; James Cowgill, State Treasurer." If you would like to see the bill I can undoubtedly produce it, but I cannot produce it tonight, because most of our people have gone home; it

is after office hours, and I cannot find it, but I will be glad to show it to you tomorrow morning.

Q. I understood you to testify yesterday that these quarterly dues of $1.50 on one notice and 75 cents on the other notice were dues levied in accordance with the terms of the policy? A. I did say so; it is a fact.

Q. If, as a matter of fact, the policies are of different dates, and the policy states that the quarter for which dues are assessed to commence one month after the insurance of the policy, how did it happen that these assessments came together? A. I don't think the contract so states.

Q. Well, have you any other reason to tell me why those dues came at the same time? A. For convenience of the member they were made to come due on the assessment dates provided in this contract. Otherwise he would have to pay eight payments on each certificate a year, instead of four.

Q. I understood you to say a little while ago you didn't think there was a contract on this subject as to when they were to be paid? A. I said that I didn't think that the contract provided that a quarterly date was to commence on the month succeeding the date of the issue of the certificate, which was your question.

Q. Was it a matter of convenience that it was put this way, or was it in accordance with the policy or certificate and contract? A. It was put that way as a matter of convenience, but I think it is also contemplated in the contract that it could be placed that way.

Q. I understood you to testify yesterday that the originals of Exhibits "S-1" and "S-2" and "T-1" and "T-2", purporting to be a second notice of the

assessment call 126, on each policy a registered letter notice was mailed to Frank Barber in St. Louis, Missouri, in the post office at Hartford, Connecticut, on certain dates referred to in your testimony? A. Yes, sir.

Q. Did you see either the original of Exhibits "S-1" or "S-2" or "T-1" or "T-2" placed in an envelope or mailed at the post office in Hartford, Connecticut, addressed to Frank Barber at St. Louis, Missouri? A. I did not.

Q. Did you ever see what you call the original of either Exhibits "S-1", "S-2", or "T-1" and "T-2"? A. Not to my recollection.

Q. Who filled in the writing in the blanks on those exhibits, if you know? A. A clerk in the office by the name of Parker.

Q. If you never saw the original of either one of those exhibits and never saw them placed in an envelope addressed to Frank Barber at St. Louis, or placed in the post office, why did you state yesterday that you knew they were so mailed? A. Well, in the first place, because our certificate register, which is our original record, show that the notices were made up and mailed on those dates, and in the second place because we have a receipt from the post office at Hartford, Connecticut, for those letters on the dates that they were mailed and registered, and in the third place because we had the receipt of Frank Barber himself for those notices.

Q. You don't know of your own personal knowledge whether Frank Barber ever signed any receipt that you have in your possession, do you? A. Not of my personal knowledge, except from comparing his sig-

nature on the receipt with his signature on the application.

Q. Mr. Lawrence, why don't you answer yes or no, whether you know of personal knowledge as to whether Frank Barber ever signed any receipt that you have for letters? A. By personal knowledge, did I see him sign those receipts when he received those letters out in St. Louis, Missouri I didn't, but if you mean do I have knowledge that he did receive them, I say that I have personal knowledge by reason of the fact that we have his receipts here bearing his signature and they are the same as compared with that on the application.

Q. You never saw him sign them? A. No; I never did.

Q. You never saw him sign the applications? A. No; I never did.

Q. You never saw him sign anything in your life? A. No; I never did.

Q. You don't know his handwriting? A. Only as appears on our applications, which are the original basis of our contract with him.

Q. When I ask you the question if you knew of your own personal knowledge as to these signatures, did you understand me to mean anything but what you personally know yourself? A. Yes; you didn't ask the question in the first place, did I personally see him sign them.

Q. So you think that I meant something that you didn't personally know yourself?

Mr. Jones: I object to the question as not being proper question on cross-examination.

A. I cannot pretend to know what is in your mind when you ask a question; I only know what the

words mean to me when you ask the question, and I answer as I think the question requires.

Q. When I ask you a question if you know that a man signed a paper, personally know that a man signed a paper, why do you commence to talk about your record and things of that kind?

Mr. Jones: I object to the question. I don't think it is a proper question.

A. Because it is from the records that I can answer the question to the best of my knowledge as to whether he signed the paper or not.

Q. All those broad statements that you have testified to yesterday about this notice being sent out and mailed, were all based upon something that you say you have seen on the records in the office and not about something that you actually saw at the time?

Mr. Jones: I object to the question because it characterizes the questions or the answers thereto as broad questions or broad answers, without specifying what the questions referred to. The witness testified about some things of which he had personal knowledge, and he testified about some other things that he knew by reason of the regular course of business with the Company, and other things from the records of the Company. I submit that it is not fair to get him now to characterize all of his answers by using the term in your inquiry about "broad" questions because that does not distinguish what you are asking about.

A. What do you mean by broad statements; what broad statements? Some of my testimony yesterday was from personal knowledge, having been present when the transactions took place and knowing about

them; some of my answers were made from records which showed what had been done, which would be the case with any witness testifying for a corporation where there was a large volume of business. It would be impossible for anyone to have personal knowledge or personal recollections of all transactions.

Q. Now, if you have any other personal knowledge outside of what you have stated in this cross-examination about these alleged notices or the envelopes or the mailing of them, I wish you would please state it. A. Well, I think I have stated all I have. I have stated all that I can recollect now.

Q. Then, when you said yesterday that you knew these notices were made out and put in an envelope and mailed, were you testifying as a part of your own personal knowledge as to the fact? A. Not from being present and knowing about it at the time; no.

Q. I understood you to say yesterday that the Hartford Life Insurance Company wrote what is known as legal reserve business until 1880? A. That is right.

Q. Well, that is commonly called old line insurance? A. Yes.

Q. And from 1880 to 1899 you wrote this Safety Fund business? A. That is right; exclusively.

Q. That is assessment insurance? A. Yes.

Q. Do you know about how much insurance has been issued by the defendant and was in force on December 31st, 1879? A. I don't recollect that amount now; I can get it for you very easily.

Q. Well, about how much did you write from 1880 to 1899, assessment business? A. Well, there was probably $250,000,000 issued. Along in 1900, I think,

there was as much as $90,000,000 in force at one time.

Q. When the defendant company in 1880 began writing Safety Fund business the legal reserve business which had been written by it prior to that time was continued in force by the company? A. It was; those contracts were carried out in accordance with the terms.

Q. The operations of the company in the two departments being continued along side by side, as separate departments, did the same clerical force which handled the business of the Safety Fund handle the business of the legal reserve policyholders? A. To some extent.

Q. Do you know how much legal reserve insurance issued by the defendant company was in force December 31st, 1909? A. I don't recall the amount now; I can furnish it for you.

Q. Do you know about how much? A. No; I don't without consulting the records.

Q. Will you please prepare a tabulation showing as of December 31st, 1909, of each year, the amount of legal reserve business in force by the defendant company in each year, commencing with the year 1899, to 1909? A. December 31, 1899, $5,156,405; December 31, 1900, $14,219,553; December 31, 1901, $16,114,930; December 31, 1902, $19,408,249; December 31, 1903, $24,551,474; December 31, 1904, $23,849,353; December 31, 1905, $18,931,951; December 31, 1906, $18,778,635; December 31, 1907, $19,998,640; December 31, 1908, $19,412,710; December 31, 1909, $21,015,998.

Not being able to complete the taking of said deposition by reason of the lateness of the hour, I adjourn

the further taking of the same until Thursday, September 19th, at 9:30 a. m.

Nellie W. Annis,
Notary Public.

Pursuant to adjournment, as above stated, on the 19th day of September, 1912, at the hour of 9:30 a. m. I continued the taking of said deposition, as follows:

Thomas F. Lawrence, in continuation of his deposition commenced on the 17th day of September, A. D. 1912, on his oath further says:

Q. You have offered Exhibit "P" purporting to be a record of the company. In whose handwriting was that record kept and made? A. I cannot tell without looking at the record. It was kept in the handwriting of the records made in the handwriting of one of two clerks in the employ of the Company, one was Mr. Parker and one was Mr. Mix; it might have been both.

Q. What do you call that record? A. Certificate Register.

Q. I see the words on there "Cancelled 3/31/10." Do you know who put that on that record? A. Undoubtedly Mr. Mix did.

Q. I am asking if you know who put it on? A. I can't tell without consulting the original record. I can do that and then answer from my knowledge. Q. Did you ever see anybody make that entry on there? A. No, I did not.

Q. The only way you could state by looking at the original record would be the handwriting? A. Yes.

Q. And the same is true of Exhibit "Q" of what I have asked you about Exhibit "P"? A. Yes.

Q. I understood you to say yesterday in reference to Exhibit "R" that the same was signed by Frank Barber? A. Yes.

Q. You never saw him sign it? A. No.

Q. You don't know his handwriting? A. Only from his original application on which his handwriting appears.

Q. You don't know whether he signed that? A. Undoubtedly he must have. That application was an application for a contract, and he accepted the contract and made the payments on it, and it is a very natural conclusion that he must have signed the application.

Q. Is that the only reason you say he did it? A. I didn't see him personally sign it.

Q. Is .that the only reason you say he did it? A. It is.

Q. I understood you to say yesterday that Exhibit "W" was a letter written by the secretary of your Company to Frank Barber; is that true? A. I don't think I stated that the letter was written by the secretary of the Company. That is a form of letter which is used in such cases when it appears that a member has changed his address, and it appeared in this case that form of notice was sent out to him with the card asking that he make proper request over his signature for a change of address for our record.

Q. You didn't personally do this yourself? A. Oh no, this is a copy of a letterbook copy.

Q. Found in your letterbook? A. Yes.

Q. Exhibit "X" purports to be a copy of a letter which I understood you to testify that your Company received from Frank Barber. You never saw

him write or sign this letter, did you? A. No, not personally.

Q. All you know about it is you find it in your files here? A. Yes, signed by him, and I naturally supposed it was from him.

Q. Exhibit "Y" I understood you to state was a copy of letter that your secretary wrote to Frank Barber December 16, 1909. You don't personally know whether your secretary wrote such a letter as that, do you? A. I can find out very easily, I was secretary at that time.

Q. I want to know whether you know now? A. I can tell very easily by consulting the record. If my personal signature is there I shall know that I wrote it; at any rate that is a copy of a letter appearing on the letterbook, sent to Frank Barber.

Q. Have you any personal recollection of writing this letter? A. No; when I write one hundred or one hundred and fifty letters a day I cannot remember letters written three years ago.

Q. Exhibit "Z". You testified about that yesterday, and, as I understood you, this is not an exact copy of any book or record that you have, but this is a compilation made up by you and taken from your records? A. That is right.

Q. And the same is true of Exhibit "AA"? A. It is.

Q. And the same may be said of Exhibit "BB"? A. It may be.

Q. Will you also state that the same is true of Exhibit "CC"? A. It is.

Q. Will you also state that the same is true of "DD"? A. It is.

Q. Exhibit "GG" purports to be a copy of letter

from Frank Barber to your company. You never saw him sign the original of this letter, did you? A. I did not.

Q. Exhibit "HH" purports to be a letter from the secretary of your company, March 12, 1910, to Frank Barber. Did you write that letter? A. I cannot say now that I did.

Q. You have no personal recollection about it? A. I did if I was here at that time.

Q. This letter is taken from your copy book, a copy of a letter that appears in your copy book? A. Those signatures are going to be supplied.

Q. You don't remember now who signed it? A. No, I do not.

Q. Now, Exhibit "II" is also a compilation made by you from your records as to dividends in reduction of calls on one of the certificates of Frank Barber. Now, that is not a copy of your record book, but a compilation made by you? A. It is not a complete copy of the record, but the figures there are taken from the record.

Q. It is a compilation made by you from your record? A. Yes, sir.

Q. Well, "JJ" is also a compilation made by you from your records with reference to the dividends in reduction of call on another certificate of Frank Barber, is it not? A. It is.

Q. Exhibit "KK", I understood you to say, was a copy of a law or an act of the Legislature of the State of Connecticut? A. That is right.

Q. How do you know? A. Well, I know from my own knowledge that the act was passed, and I know that the provisions contained therein are the provisions of that act, and I know that it bears the cer-

tification of the Secretary of State and that it is a copy of the act.

Q. You never saw the bill itself as passed and signed by the Speaker of the House and the presiding officer of the Senate and approved by the Governor? A. No, I never have.

Q. Never compared it with it? A. Not with that original.

Q. Or with any other law book, did you? A. No.

Q. I understood you to testify yesterday that Exhibit "OO" was a copy of a decision of the New Haven County Superior Court; did you ever see the record of that decision? A. Not the original record; no.

Q. Did you ever compare this with the record, the original record of that decision? A. Not that has been filed in the court; no.

Q. I understood you to say also, in response to a question by Mr. Jones, Exhibit "M" was a decree of the New Haven County Superior Court of Connecticut, did you not? A. I did.

Q. You never saw that decree as written on the record? A. No; I did not.

Q. Never compared this with that? A. No; but I was familiar with all the Dresser litigation, from the very start; I was present at all of the hearings at which any testimony was taken in the case, practically all of the hearings before Judge Shumway and Judge Curtis, and so I am familiar with all the testimony in the case and all rulings made by the Court at the time, and indications that the Court gave during the trial of the case as to what the decision and judgment would be, and I know those decisions there contain the decisions the Court indicated it was going

to give, and those papers there were printed under my direction; they are copies of the decision which was sent up to us by the Clerk of the New Haven County Superior Court, and, furthermore, they have been certified to by the clerk of the court as being copies of the original decision on file.

Q. Did you understand Mr. Jones when he asked you, personally, if that was a copy of that record? A. Why, yes; I did. I feel as sure that they are copies of that original decision as I am sure of anything in the world.

Q. You thought he wanted you to take into consideration the certificate of the clerk on the case? A. I had them printed and carefully compared and they are the copies of the decisions sent us by the clerk of the court.

Q. I now hand you Exhibits "EE", "FF" and "MM", and ask you to state if those are not compilations? A. They are.

Q. Did you personally make all the compilations that you have testified about which have been offered as exhibits in this case? A. Some of them I made personally and some of them I had made. Those that I had made I compared the figures with the books, so that I know they are correct.

Q. When was assessment 126 levied, and by whom? A. It was levied as of date January 29, 1910. It was actually computed prior to that date of January 29, 1910, and levied by the officers of the company.

Q. By what officers? A. By the president and secretary and probably one of the vice-presidents.

Q. Who was president? A. Mr. George E. Keeney.

Q. Who was secretary? A. T. F. Lawrence.

Q. Is that yourself? A. Yes.

Q. Who was vice-president? A. At that time there were two, Mr. Raymond G. Kreeney and Mr. Lewis G. Gordon.

Q. Were they both present at the levying of this assessment? A. No; I think Raymond G. Keeney was. I am not sure; I said, probably one of the vice-presidents.

Q. Did you keep a record of that meeting of your officers? A. No.

Q. What day was that held? A. I couldn't state today on what date; it was held probably the 5th or 6th of January. It was held as soon as the information necessary for the officers to have to levy this assessment was at their disposal.

Q. Where was it held? A. At the president's office of the Hartford Life Insurance Company.

Q. In this room? A. Yes.

Q. Do you remember at what time of the day it was held? A. No.

Q. Do you now have any personal recollection of meeting with the president and vice-president and levying this assessment 126? A. No, I have not.

Q. Then, of course, you don't know what was done and said at that time now of your personal knowledge? A. No, I do not, except that I know what was done at the levying of all assessments. We had the figures and took them to the president and we went over them and the assessment was determined on. I know that that was done in that particular case.

Q. The only way you know that was done in this particular case is the custom you have just stated? A. Yes, it was always followed in every case, sometimes only the president and myself and sometimes

one or both of the vice-presidents, usually only the president and myself; we had that matter particularly in charge.

Q. I understood you to say yesterday that the Safety Fund reached its par value of $1,000,000 on December 31st, 1909, is that true, did you so state? A. No, I don't think I did so state.

Q. Didn't Mr. Jones inquire of you about the par value of the $1,000,000 Safety Fund yesterday, or the day before, and didn't you state its par value in this deposition? A. I don't think so, it isn't my recollection that I had in this deposition.

Q. What was the Safety Fund of $1,000,000 in the Men's Department invested in on December 31st, 1909, and January 29, 1910? A. It was invested in various securities which were legal for life insurance companies under the Connecticut statutes—railroad bonds, municipal bonds, and some mortgages.

Q. How do you know? A. How do I know. From making up the annual statement of December 31st, 1909, which I made up personally.

Q. Did you ever see any of those securities? A. No, I have not personally, they are in the custody of the Security Company, the trustee.

Q. Do you know the names of the corporations or municipalities which issued the bonds and stocks and securities you have mentioned? A. I cannot give them offhand from recollection.

Q. Did you testify as to the par value of any stocks or bonds or securities held as an investment of any of those funds? A. No, I didn't testify to the par value of any particular investment in the fund.

Q. Do you now remember of testifying with reference to the face value and par value of any paper

or securities held in the Men's Division of any of those funds? A. I do not.

Q. Have you any record that you know of, of anything further having been done by your Company with reference to the Frank Barber certificates in question after March 11, 1910? A. I have no recollection of anything that was done after March 11, 1910, except that the record shows that the assessment due March 1st, 1910, was not paid and the policy was canceled.

Q. The officers of the Company took no specific action that you have any record of? A. No; it was necessarily purely automatic; it wasn't necessary.

Q. Whether or not it was necessary is simply an opinion of yours? A. Yes; my opinion based on the terms of the contract.

Q. Did your officers meet and declare any formal forfeiture of these certificates for non-payment of this call? A. No.

Q. Was there any moneys on hand in the fund on the 29th day of January, 1910, which had accrued from any prior assessment levied other than the Mortuary Fund that you testified to, on December 31st, 1909? A. There were undoubtedly balances in the Dividend Fund and Tax Fund, and the Advance Payment Fund and the Stipulated Premium Fund.

Q. Did you take these into consideration when you called this assesment January 29, 1910? A. Funds on hand January 20, 1910? No; we didn't take into account conditions existing on January 29th, but the conditions as existed on December 31st, and had to because it took a month to make the calculations. We did take into account the condition of the various funds of the Company on December 31st.

Q. Was there any surplus left from the levying of assessment 125? A. There was a balance in the Mortuary Fund December 31st of $74,900. The assessment due December 1st did go into the Mortuary Fund, that part which had been paid, but it hadn't all been paid on December 31st, so that the full amount assessed for in the call due December 1, 1909, had not been paid on December 31, 1909.

Q. Do you know whether or not there was any moneys left from assessment 125 after the payment of the death losses covered by the call not paid when the call was issued? A. What call?

Q. One hundred twenty-five. A. There was no money from call 125 in the Company's possession before call 125 was issued.

Q. As a matter of fact a great number of the death claims for which your call 125 was issued had been paid by your Company before the call was made? A. Undoubtedly some of them had; I couldn't state how many, maybe, without consulting the record.

Q. An assessment call 125 was for a sufficient amount, in your judgment, when it was made to pay the total amount of death claims as listed, paid and unpaid, at that time? A. It was for the death losses listed and was of sufficient amount to replenish the Mortuary Fund as in our judgment it should be.

Q. Was assessment 125 simply based upon an amount, in your opinion, that it would take to replenish the Mortuary Fund as it should be at that time? A. For certain death losses, yes; covering certain death losses included in that call. The as-

sessment is for certain death losses and is sufficient, in our judgment, to meet those death losses.

Q. What did you mean a while ago when you stated to me that assessment 125 was made sufficient to replenish the Mortuary Fund? A. For death losses that had already been advanced out of that fund, out of the balance therein, when call 125 was levied and collected.

Q. Do you know about what per cent of death claims had been paid before call 125 was issued? A. I don't know without examining the record; I can get it for you in the same way you got it on call 126 yesterday.

Q. Is there any way you can tell from your records, without going into detail and checking up each one of those claims as we did yesterday, about the condition of the Mortuary Fund and what you anticipated it would take to pay death claims that you had not paid that were covered by the call? A. No way except going to the records and checking up the death claims and seeing what dates they were paid.

Q. When you say that the officers of the company levy an assessment, do they have the information before them as to the number of death claims that have actually been paid that are covered by the call? A. Sometimes; not necessarily so.

Q. Did they on assessment 125? A. I cannot say whether they did or did not.

Q. Don't you know that they didn't? A. No, I don't. The compilation is sometimes made.

Q. When was it ever made? A. I cannot say now when it has been made, any definite date. It is made when the officers think that information is necessary.

Q. I am asking you to tell me one time when you

personally know it was made. A. I could not tell you. I have had it made *for* my own personal information, to base my judgment on, a great many times. I cannot tell you any particular day in the last five or six years I have had it made.

Q. Have you any record that would show what was before any officer who might have levied the assessment 126? A. Yes, the record that has been before us here of the calculation of the call—Exhibit "K".

Q. That is a mere compilation that you have made? A. Exhibit "K" is a part of the original record which has been before us here.

Q. Didn't you tell me that was taken from a part of the records and compiled by you? A. No, I didn't so state.

Q. Exhibit "K" just taken from one book? A. The figures therein are taken from one book.

Q. From one page? A. From four pages of one book.

Q. Did you know on any day in January, 1910, how many death claims had actually been paid, covered by call 126, as published and sent out by you? A. I might have and I might not; I cannot say.

Q. You don't know whether you did or not? A. No, it wasn't necessary that I should know.

Q. Have you testified as to the exact number of dollars realized from call 126, from the Men's Division of the Safety Fund Department? A. I have not.

Q. Do you know how much money was actually received from that call? A. I do not. I know the percentage of lapse on that call, but I do not know the exact amount of money that was received on that call, and our books do not show it in any way. The only

way that that could be determined would be by going over our certificate registers, of which there are probably thirty, and taking off the exact amount paid by some ten thousand members on that call and totaling it. Our books show only the amount received in the Mortuary Fund day by day, but not on what particular call it was received, but we do know how much of the membership in amounts of insurance pay the call and how much terminates by death and by lapse.

*Q.* Do you know how much money was realized from call 125 in the Men's Division of the Safety Fund Department? *A.* I don't. As I have stated in answer to your pervious question, I know how much of the membership per thousand of insurance paid that call and how much lapsed, what percentage terminated by lapse and death, and what the percentage of termination was, but our books do not show the actual amount of money received by that call, and it could only be computed in the manner as I have described in the previous answer.

*Q.* I notice on Exhibit "N", death claim of Moses S. Austin, Bridgeport, Connecticut, February 13, 1907, $3,000. Do you know whether there had ever been a prior assessment to cover this claim? *A.* I know there had not.

*Q.* How do you know? *A.* From having consulted the records.

*Q.* When? *A.* The last time yesterday. It showed on the death claim register, was included in call 126.

*Q.* The date of death was February 13, 1907, and this call was made January 29, 1910. How did that happen? *A.* Well, that quite often happens in this way, that a certificate has been assigned to someone and the assignee and the member live in different

cities, it has been assigned for debt, and the member does not take any further interest in it and often the assignee does not know of the death at the time it occurs until some time thereafter, and when he learns of it he notifies us.

Q. Was that the case in this particular instance, Moses S. Austin? A. To the best of my recollection, it was.

Q. When was the claim first made to you in this Austin matter? A. The claim was undoubtedly made to us the latter part of 1909.

Q. What day in 1909? A. Without consulting the records I cannot state, but I would be very glad to produce the record which I produced yesterday and give you the exact date and month.

Q. As a matter of fact, you have papers and death proofs in each one of those cases, have you not? A. We have, and we would be very glad to produce them.

Q. In your direct examination Mr. Jones asked you to state what was taken into consideration when assessment 126 was levied, and you went on to state to him a number of things that were taken into consideration. As a matter of fact, you only know that there was an examination of some records that appear in your office now? A. Well, I only know that from an examination of the records and personal recollection, as I was present at the time that that assessment was calculated and determined upon.

Q. I understood you to say on cross-examination that you now have no personal recollection of the day and the time and who was present when assessment 126 was levied; is that true? A. I did say I had no particular recollection of the circumstances

of the day and time, yes, but I know the president and myself were present.

Q. The only way you know that, is the custom, isn't it? A. As I answered before, because we did it all the time I was secretary from 1907, and as long as president Keeney was connected with the company.

Q. When you answered Mr. Jones' question as to what was taken into consideration, you did that in view of certain records that you had gone over at his instance in the preparation of this case just a short time before your deposition commenced? A. Why, as to actual figures; yes. I cannot remember every transaction and every figure of the various calculations and transactions of this company there is.

Q. And when you testified on that question you had before you certain typewritten exhibits that had been offered here, and it was from them that you refreshed your memory when you testimony was given here? A. As to actual figures; yes.

**Redirect Examination**, by Mr. Jones.

Q. Mr. Lawrence, you testified that there were several issues of each of the forms of certificate designated regular assessment certificates, form 3 certificates, form 4 certificates, and form 3½ certificates, being the several forms which you have testified were segregated for the purpose of collecting mortuary call 126, and which segregation into the four classes appears on the calculation of mortuary call 126, a copy of which is made Exhibit "K" in this case. Now, was each of the several editions of the several forms of certificate regular Safety Fund, form 3, form 4 and form 3½ which was in force at the time

mortuary call 126 was levied, included in the calculation of call 126, as shown by Exhibit "K"? A. Yes.

Q. Was every member of the Men's Division of the Safety Fund Department whose certificate was in force at the time mortuary call 126 was levied, assessed on call 126? A. Yes.

Q. You have testified that the applications which have been marked by the Notary respectively, Exhibits "B" and "C" for identification, and by stipulation are not attached to this deposition, but are to be produced at the trial, are the original applications made by Frank Barber for policies in suit. On cross-examination you have been asked about your knowledge of Frank Barber's signature. I want to ask you whether you have in the file of this company any other applications for insurance signed by Frank Barber for the policies in suit? A. We have not.

Q. If those applications are not in fact signed by Frank Barber, have you any applications for the policies in suit signed by or purporting to be signed by Frank Barber? A. We have not.

Q. You have testified that the seven-year stipulated premium policies contributed to the Safety Fund of the Men's Division the sum of $2.00 per annum during the first seven years, or a total of $14.00 during that time. Did the holders of the seven-year stipulated premium policies during the first seven years of their existence contribute to the mortuary fund of the Men's Division of the Safety Department anything by the way of assessments levied against the members of that department, and were their death losses during those seven years paid from the mortuary fund of the Men's Division of the Safety Fund Department? A. The holders of the

seven-year certificates, designated Form 4, did not during the first seven years from the date of issue contribute to the mortuary fund of the Men's Division of the Safety Fund Department of the company, and the death losses on those certificates were not paid from that mortuary fund.

Q. State whether the payments on those seven-year stipulated premium certificates made by the holders of those certificates were accumulated separately and independently of the mortuary fund of the Men's Division during the first seven years of the existence of those certificates, and whether the death losses incurred among the holders of those certificates were paid during the first seven years of their existence from the fund so accumulated and maintained of the payments made by the holders of those seven-year certificates during those seven years of their existence. A. The premiums paid during the first seven years from the date of issue by the holders of the seven-year certificates, designated Form 4, were, after deducting deposits to the Safety Fund and the various expense items stipulated in the contract, a copy of which is an exhibit in this case, were accumulated as a separate and distinct fund from the mortuary fund of the Men's Division of the Safety Fund Department. The death losses occurring on those seven-year policies, designated Form 4, during the first seven years from the date of issue, were paid from this special fund.

Q. After the expiration of the seven years the holders of those certificates went into and became members of the Safety Fund Department and were assessed thereafter as all other members of that department were assessed and at the rate shown by the

new or higher table of rates? A. Yes, they were; after the expiration of the seven years they were continued as members of the Safety Fund Department and were included with the other members for the purpose of assessment and were assessed in exactly the same manner as all other members of the Safety Fund Department on the table applicable to them.

Q. And that table was what table? A. That table was the new or higher table.

Q. Now, during the first seven years of the existence of those certificates the fund in which the payments made by the holders of those certificates, after deducting from such payments their contribution to the Safety Fund and the other items about which you have testified, and from which the death losses on those certificates during the first seven years was paid, is designated by you the Stipulated Premium Fund, is it not? A. It is designated by us the Form 4, which is a particular fund of the Stipulated Premium Fund.

Q. And is included in the items referred to in exhibits in this case, as the Stipulated Premium Fund, and that fund includes not only the legal reserve on those particular policies, but as well the excess of payments made to that fund over the death losses paid therefrom, and the legal reserve applicable to the policies? A. Yes, on the stipulated premium policies.

Q. Now, was the amount in the Stipulated Premium Fund on December 31, 1909, or on January 28, 1910, applicable to the payment of death losses in the Men's Division of the Safety Fund Department? A. Absolutely not; it belonged to the stipulated pre-

mium policies and could only be applied to their benefit in accordance with the terms of their contracts.

Q. You have also stated in answer to Mr. Morrow's question that there was undoubtedly a balance in the Advance Premium Fund. State whether or not that fund consists of amounts advanced by members of certificate holders for the purpose of paying future assessments that shall be levied against their particular certificates. A. It does.

Q. The amount in that fund was an aggregate of several amounts paid to you in advance by particular members in order that they might have in your hands funds with which to pay assessments that might thereafter be levied against them? A. That is right.

Q. And was the amount in that fund in any way applicable to the payment of death losses in the Mortuary Fund? A. Absolutely not.

Q. Now state whether or not the amount in the Tax Fund was made up of payments made by the members for the amount of the tax levied by the particular state in which they resided, for the purpose of paying the taxes assessed by those states against the Company on assessments collected in those states, less what had previously been paid by the Company to the states for taxes?

Mr. Morrow: I made the objection yesterday that the levy of the tax assessment could not be proved by parol and I understood your Honor overruled that, and I saved exceptions to that. Now, of course, I don't intend to waive any point by permitting this other parol testimony to be read and take it there is no use to continue to object.

The Court: No, the ruling is the same.

Plaintiff excepted at the time.

A. It was so made up.

Q. And was the balance in that fund applied by you from time to time, and is it being applied by you from time to time, to the payment of taxes levied in the several states on the assessments which you collected from time to time and from year to year? A. It is. It has been so applied and it is being so applied.

Q. Was the balance in that fund applicable to the payment of death losses in the Safety Fund Department? A. Absolutely not, that was only for the payment of taxes.

Q. You produced here yesterday in answer to Mr. Morrow's question checks for the amount of taxes paid by you to the State Treasurer of Missouri in 1910 and 1911. Were those checks originally issued by this Company? A. They were.

Q. And are drawn one on the Hartford National Bank and one on the First National Bank, is that correct? A. That is right.

Q. And how did they come back to you? A. They came back in the usual course, the checks had been paid through our banks, the one drawn on the Hartford National Bank being paid by the Hartford National Bank and the other drawn on the First National Bank being paid by the First National Bank.

Q. When they came back to you they were canceled by the banks as shown on their face? A. Yes.

Q. And they constitute the vouchers of your Company for those payments and are a part of the records of your Company? A. That is right.

The defendant offers papers referred to in evidence, which is hereto attached and marked "Defendant's Exhibits PP and QQ", as follows:

**DEFENDANT'S EXHIBIT "PP".**

(Copy)

(H) (L)
Safety Fund Department. $2398 93/100 No. 1119.

Hartford, Conn., Apr. 15, 1910.

Hartford Life Insurance Company.

Pay to order of State Treasurer, Missouri, Twenty-three hundred ninety-eight & 93/100 Dollars for 2% Tax on S. F. Collections in 1909.

(Not over Twenty-six Hundred $2600)

Countersigned.

Geo. E. Keeney, President. Lewis E. Gordon, 2nd Vice-President.

(I) (C)

Stamped on face: Hartford National Bank. Canceled.

Endorsement.

Received Payment in Full as Specified on Reverse side.

Pay Mississippi Valley Trust Co., St. Louis, Mo., or order. James Cowgill, State Treas.

Received Payment Through Clearing House Apr. 22, 1909. First National Bank, Hartford, Conn.

Pay Girard Trust Co., Philadelphia, or order. All Prior Endorsements Guaranteed. Mississippi Valley Trust Co., St. Louis, Mo., James E. Brock, Secretary.

Prior Endorsements Guaranteed. Pay any Bank

or Banker, or order, Apr. 21, 1910. The Fourth Street Nat'l Bank of Philadelphia, Pa. R. J. Clark, Cashier. D39.

Pay to the Fourth St. Nat'l Bank, Philadelphia, or order. Endorsements guaranteed, Apr. 21, 1910. Girard Trust Company, Philadelphia, Pa., Charles J. Rhoads, Treasurer.

## DEFENDANT'S EXHIBIT "QQ".

(Copy)

(H) (L)

Safety Fund Department. $2339 09/100 No. 1270

Hartford, Conn., Apr. 4-1911.

Hartford Life Insurance Company.

Pay to order of State Treasurer, Missouri, Twenty-three hundred thirty-nine & 09/100 Dollars for 2% Tax on S. F. Collections of 1910.

(Not over Twenty-six Hundred $2600$)

Countersigned.

Lewis E. Gordon, Vice-President. Raymond G. Keeney, Vice-President.

Stamped on face: First National Bank. Canceled.

(I) (C)

Endorsement.

Received Payment in Full as Specified on Reverse Side.

Pay Mississippi Valley Trust Co., St. Louis, Mo., or order. James Cowgill, State Treas.

Pay Girard Trust Co., Philadelphia, or order. All prior Endorsements Guaranteed. Mississippi Valley Trust Co., St Louis, Mo., James E. Brock, Secretary.

Pay to the order of the Boston Clearing House Association. Prior Endorsements Guaranteed. Second National Bank of Boston. By T. H. Breed, Cashier. Apr. 11, 1911. Pay to the Order of Any Bank or Trust Company, Prior Endorsements Guaranteed. Boston Clearing House Association, by Charles A. Ruggles, Manager.

Pay to Philada. Nat'l Bank of Philadelphia, or order. Endorsements Guaranteed, Apr. 10, 1911. Girard Trust Company, Philadelphia, Pa. Charles J. Rhoads, Treasurer.

Pay to the order of T. H. Breed, Cashier, Apr. 10, 1911. All prior endorsements guaranteed. The Philada. Nat'l Bank, H. J. Keser, Cashier.

Q. The tax of 7 cents levied against Frank Barber on call 126 for policy 128293, and the tax of 15 cents levied against Frank Barber on policy 174416 for call 126 was not paid by Frank Barber, was it? A. It was not.

Q. Did the Hartford Life Insurance Company pay to the State of Missouri any tax on the amount of call 126 levied against Frank Barber on either policy 128293 or 174416? A. It did not. We would have paid the tax had the call on 126 on those certificates been paid, but it was not.

Q. And it was not included, therefore, in your return for taxes, or in the amount paid for taxes for the year 1910, because the assessment 126 was not paid by Frank Barber on either policy? A. That is right.

Q. Did you pay to the State of Missouri on previous calls levied against and paid by Frank Barber the taxes levied against you in Missouri on the amount of your collections in Missouri? A. We did.

Q. And the tax payments made to Missouri were made by check similar to Exhibits "PP" and "QQ" and charged against the Tax Fund? A. They were.

Q. Now, with respect to the Dividend Fund, you have testified that on December 31st, 1909, you received from the Security Company of Hartford a sum approximating $20,000 as the income and accretions from the Safety Fund Department, Men's Division. You have also testified that the balance on hand in your account of income and accretions received from the Security Company after the disbursements thereof by way of dividends was as shown by Exhibit "FF" $19,447.39. Now will you please state whether in arriving at the balance of $19,447.39 you included the amount received from the Safety Fund Department on December 31st, 1909? A. We did.

Q. You have also testified concerning the apportionment of dividend distribution applicable and credited on call 126 among the holders of insurance in the members of the Men's Division of the Safety Fund Department aggregating $27,171,750. Did the apportionment then made take into account and include the amount which you received from the Security Company by way of income and accretions to the Safety Fund Department on December 31, 1909? A. It did.

Q. The amounts received by you by way of income and accretions on the Safety Fund Department, Men's Division, from the Security Company of Hartford in 1909 are shown by Exhibit "FF" to be $39,288.95. Was that amount received by you from the Security Company in one payment or in two payments? A. In two payments.

Q. On what dates? A. One payment on the 30th of June, 1909, the other on the 31st of December, 1909.

Q. And the amount of $39,288.95 shown in Exhibit "FF" as having been received by you in 1909 includes the payment made by the Security Company to you on December 31st, 1909, to which we have heretofore referred? A. It does.

Q. Now, was the amount in the Dividend Fund at any time applicable to the payment of death losses incurred in the Men's Division of the Safety Fund Department? A. It has not; it was only applicable to the payment of dividends in accordance with the terms of the contract.

Q. You have testified concerning the Women's Department and you have produced here a copy of one of the forms of certificate issued in the Women's Division, attached to which is a copy of the contract between the Hartford Life Insurance Company and the Security Company concerning the Women's Division. Will you please state whether all of the certificates issued in the Women's Division were issued after the execution of the trustees' contract to which I have just referred, and pursuant to the provisions of that contract? A. They were.

Q. You testified in answer to Mr. Morrow's question that there were several different forms of certificates issued in the Women's Division. My purpose in introducing Exhibit "LL" was to show the trustees' contract concerning that department. Have you in the office, and are you ready to produce, if requested so to do by plaintiff's counsel, a copy of the form of certificate issued in that department? A. We have, and would be glad to produce it.

Q. At the time when you were testifying concerning Exhibit "K", which is a tabulation or calculation of Mortuary Call 126, you had before you and you now have here the original book in which the calculation was made and from which and of which in so far as the record relates to call 126, the paper Exhibit "A" is a copy, is that not correct? A. Yes.

Q. Now, you have testified that Exhibits "Z", "AA", "BB", "CC", "DD", "II", "JJ", "EE", "FF", "MM", are compilations from your records as distinguished from exact copies of the record or of particular pages of the record. At the time when these several exhibits were prepared and at the time when the several exhibits were checked and compared by you you had before you the several books in which appear the entries from which those compilations were made, did you not, and you now have them here in the office? A. I did, and they are now here in the office.

Q. You can produce all of the several books and records from which those compilations were prepared and with which they were checked? A. The books and records referred to are now in the office and are here produced before the notary.

Q. Are you satisfied that the several compilations referred to are correctly and accurately made from the books and records now in the office and produced before the notary? A. I am.

Q. Please state whether the entries made in these books and records were made from day to day and from time to time as the transactions occurred and are a part of the books and records kept by you from day to day in the regular conduct of your business? A. They were and are.

Q. In answer to Mr. Morrow's question you stated the amount of death claims listed in a list accompanying call 126 which had been paid, and gave the dates on which such claims were paid, and in answering his question you referred to your records and gave the dates as shown by the records on which the claims were paid. Have you at my request compiled from the records a statement of the death claims in the Safety Fund Department, Men's Division, that were unpaid and outstanding on December 31st, 1909, and does the paper which I now show you correctly set forth the name and amount and the total of such unpaid death claims on that date? A. It does.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit RR", as follows:

**DEFENDANT'S EXHIBIT "RR".**

**Safety Fund—Men's Division.**

Unpaid Claims Outstanding—December 31st, 1909.

| Amount. | Name of Insured. |
|---|---|
| 5,000 | John L. Piper |
| 1,000 | George Pfeuffer |
| 5,000 | Albert W. Fisher |
| 5,000 | Otto Buchel |
| 2,000 | Chas. A. Stewart |
| 1,000 | A. Theo Cotten |
| 1,000 | Julius T. Capers |
| 3,000 | Henry D. Bulkley |
| 5,000 | Jacob W. Goetz |
| 1,000 | Solomon Finch |
| 1,500 | Frederick A. Garden |
| 2,000 | Silas Rosenthal |
| 2,500 | R. A. Pinkley |
| 1,000 | Newman T. Blake |

| | |
|---|---|
| 2,000 | Solomon S. Miller |
| 1,000 | Michael Camire |
| 3,000 | Joseph F. Mitchell |
| 1,000 | Alfred Burgault |
| 3,000 | Chester D. Burnham |
| 1,000 | H. C. Harmon |
| 2,000 | Zacheus L. Cox |
| 2,000 | E. L. Davis |
| 5,000 | Jared F. Harrison |
| 1,000 | David U. Carson |
| 2,000 | John A. Lawing |
| 1,000 | Edwin J. Judd |
| 1,000 | Gustave Kyrkander |
| 1,000 | Samuel D. Spencer |
| 1,000 | Jacob Kissel |
| 1,000 | Edgar L. Barber |
| 1,000 | Wilhelm Huebner |
| 1,000 | William W. Russell |
| 1,000 | Carl Salzman |
| 1,000 | Ambrose Brown |
| 5,000 | Phillip B. Segee |
| 1,000 | Solomon Rosenthal |
| 7,000 | James Sharkey |
| 5,000 | Peter Cavagna |
| 5,000 | P. P. Toale |
| 2,000 | Daniel Woerner |
| 5,000 | F. Marcellus Cox |
| 7,000 | Ulysses F. Moss |
| 1,000 | Peter Leasonfeld |
| 1,000 | Alfred H. Griffin |
| 1,000 | Joseph Discher |
| 1,000 | Harland N. Kinne |
| 5,000 | E. Welch |
| 1,000 | Chas. Henry |
| 5,000 | H. D. Cummings |
| 5,000 | Louis Jenkins |
| 166.67 | John Murphy |
| $128,166.67 | |

Q. Have you also prepared a list of the death claims in the Safety Fund Department, Men's Division, incurred during January, and from and including January 1st to January 29th, 1910? A. I have.

Q. It is the paper which I now hand you, and which will be marked "Exhibit SS"? A. It is.

The defendant offers paper referred to in evidence, which is hereto attached and marked "Defendant's Exhibit SS", as follows:

**DEFENDANT'S EXHIBIT "SS".**

List of Death Claims January 1, 1910, to and Including January 29th, 1910.

| Name | Amount |
|---|---|
| B. J. Flippin | $ 2,000 |
| Chas. C. Mather | 3,000 |
| Geo. M. DeForest | 1,000 |
| Chas. B. Ritter | 1,000 |
| Wm. Clancy, Sr. | 1,000 |
| Wm. Devine | 2,000 |
| Judson R. Allen | 2,000 |
| B. J. McTureous | 1,000 |
| M. DeW. Stevenson | 5,000 |
| Antoine St. Louis | 2,000 |
| Chas. W. Odom | 1,000 |
| E. Murray | 1,000 |
| Olin S. Luffman | 5,000 |
| Henry K. Ingraham | 2,000 |
| Paul Bredow | 1,000 |
| Isidor W. Ashmer | 5,000 |
| Thos. McGraw | 1,000 |
| John H. M. VanB. Wisker | 2,000 |
| B. H. Murray | 5,000 |
| John H. Stonham | 1,000 |
| Gray Armstrong | 4,000 |

| | |
|---|---|
| Hugh Neill | 3,000 |
| Cynthia M. Morgan | 1,000 |
| Chas. A. A. Koenig | 2,000 |
| Edward B. Baxley | 3,000 |
| B. R. Corwin | 3,000 |
| Wm. A. Blake | 1,000 |
| Thos. R. Curran | 1,000 |
| James D. Gunn | 2,000 |
| Wm. F. Wilson, Sr | 2,000 |
| Henry Lampe | 1,000 |
| Edw. D. Connoe | 1,000 |
| John Rowe | 1,000 |
| James Burns | 2,000 |
| Clark F. Sumner | 5,000 |
| Alsinus M. Smith | 5,000 |
| Harmon Nichols | 3,000 |
| Timothy McNamara | 2,000 |
| Chas. M. Watrous | 1,000 |
| Thos. S. Reveal | 1,000 |
| N. F. Hamilton | 3,000 |
| J. E. McLoughlin | 2,000 |
| J. Austin Pease | 2,000 |
| J. T. Wilbanks | 2,000 |
| Watson D. Hayden | 2,000 |
| Henry M. Preston | 10,000 |
| Henry A. Wheeler | 2,000 |
| Ann A. Sinclair | 1,000 |
| Wm. King | 1,000 |
| Peter E. Ewell | 1,000 |
| Walter A. Jenkins | 1,000 |
| Jeremiah Leary | 1,000 |
| John Dunwoody | 2,000 |
| Linus T. Wilbur | 2,000 |
| | $120,000 |

Q. Are the tabulations RR and SS prepared from the records of your company? A. They were.

Q. And were those records regularly kept from day to day as the transactions occurred, and do they constitute a part of your method and manner of recording the transaction of the defendant company? A. They were and do.

Q. Now, in answer to Mr. Morrow, you stated that some 15 of the claims listed on Exhibit "N", being a list of death claims which accompanied Mortuary Call 126, were not paid prior to January 28, 1910. Are those 15 death claims included in Exhibits "RR" and "SS"? A. They are included in Exhibit "RR" but not in Exhibit "SS".

Q. The books and records from which the tabulations or compilations Exhibits "RR" and "SS" are now produced in this office before the notary, are they not? A. Yes.

Q. In one or more of the exhibits offered in evidence you have listed as a liability and have deducted from the amount in the Mortuary Fund, Men's Division, a death claim of $166.67, the particulars concerning which you testified about in answer to Mr. Morrow's question. Will you please state why that particular claim of $166.67 is charged as a liability against that fund when the other death claims, the aggregate of which appears on Exhibits "RR" and "SS", are not charged as a liability against that fund? A. Because that particular death claim had been assessed for and had been collected and the money so collected was in the Mortuary Fund and was there subject to the order of the beneficiary.

Q. And as a matter of fact the amount of that claim, $166.67, while it was unpaid it was charged as

a liability in your statements to the Insurance Department? A. It was.

Q. And the other death claims in the Safety Fund Department were not charged by you as a liability in your statements to the Department? A. Yes, they were charged as a liability in our statements to the Department, but a corresponding amount for those other death claims was put in the assets under the head, "Premiums in course of collection, Safety Fund Department." That was not done, however, in the matter of the death claim, $166.67, for the reason above indicated.

Q. You have been asked by Mr. Morrow as to the amount on hand in the Women's Mortuary Fund December 31, 1909, and you have stated there was $84,000 and some odd dollars. Will you please state whether the amount in the Mortuary Fund of the Women's Department was applicable to the payment of death losses in the Men's Department? A. It was not, it was applicable only to the payment of death losses in the Women's Division.

Q. You have stated that the call 126, as well as previous calls, was levied for the purpose of creating and maintaining or replenishing the Mortuary Fund, but the amount of that call was based upon the aggregate of the deaths listed in Exhibit "N", and the aggregate of the deaths so listed was the amount shown on Exhibit "K" at the bottom, or near the bottom, $322,378.48, was it not? A. It was.

Q. Now in answer to questions propounded by both myself and Mr. Morrow you stated that the registered return receipts, copies of which have been made Exhibits "U" and "V" were signed by Frank Barber. You have also stated that you did not see

him sign those receipts and that you did not see him write them. I want you to state whether or not you have compared his signature with his signature upon what you say are the original applications for these policies and with the letters written you by Frank Barber from time to time? A. I have.

Q. And you stated that the receipt was signed by Frank Barber because of the similarity between the signature on the receipts and signatures upon the applications and the letters received by you which have been given in evidence? A. That is right.

Q. Now concerning your meeting of your officers at which Call 126 was levied, do you recall that such meeting was held? A. I do in this way, that such a meeting was held I know because I was present at the time of the levying of every assessment from December, 1906, until the present time.

Q. But you do not recall the date or the hour or what particular thing transpired at that meeting? A. That is right

Q. Would it be possible to go through your books and ascertain just what was the aggregate amount paid by the members of the Men's Division of the Safety Fund on Call 126? A. It would be possible I have before stated in this testimony that it would be necessary to go through the certificate registers and take off the amount paid on some ten thousand certificates. This would take probably weeks to determine this amount in that way.

Q. Is it necessary in your business to know the aggregate amount paid on any particular call? A. It is not.

Q. The money received on calls goes into what fund? A. Mortuary Fund.

Q. It is necessary, is it not, for you to know the aggregate amount of money in that fund from time to time? A. It is.

Q. And your records are so kept to enable you to determine how much is in that fund at any particular time? A. Yes.

Q. But they are not so kept as to show just how much of that money was paid on any particular date on account of any particular call? A. That is right.

Q. Money is received into that fund on given days in payment of not only call 126, but previous calls as well, is it not? A. Yes.

Q. How long would it take, in your judgment, to compile from your records a statement showing the aggregate amount which the Company received on Call 126? A. I should say six to eight weeks with a force of clerks working on it.

Q. You have testified that a registered letter notice was sent to Frank Barber with respect to Certificate 128293 on March 10, 1910, and a copy of that registered letter notice and the accompanying second notice was marked Exhibit "S-1" and "S-2", and that a registered letter notice was sent to Frank Barber on Policy 174416, and copies of that registered letter notice and the second notice accompanying it are marked Exhibits "T-1" and "T-2". Was any other registered letter except the registered letter notices, Exhibits "S-1" and "S-2", and "T-1" and "T-2", sent by you to Frank Barber on said March 10, 1910? A. No.

Q. So that if the registered letter receipts, which are respectively Exhibits "U" and "V", are not receipts for those registered letter notices, they are nec-

essarily receipts for nothing that emanated from this office? A. That is right.

Q. Who signed the letter dated December 16, 1909, which is Exhibit "Y"? A. Mr. F. H. Morgan, who is now assistant secretary. At that time he was a clerk in the employ of this Company and he signed my name to that letter.

Q. Who wrote and signed the letter dated March 12th, Exhibit "HH"? A. I wrote that letter and signed it.

Defendant's counsel again proffers to plaintiff's counsel the right to examine any and all of the records and compare same with the tabulations made in this case, which records are now in this office.

Mr. Morrow (Q.): I don't know whether I asked you the question or not, but it is a fact that the tax rate in Missouri covering the periods for which you levied taxes on these assessments or dues or premiums on Call No. 126, was a flat 2% rate on net premiums? A. That is right.

Mr. Jones (Q.): Have you in your possession and do you now produce for inspection before the notary proof of death claim on account of the death of Moses S. Austin referred to by Mr. Morrow? A. I have and I do.

Mr. Jones (Q.): Please produce that claim. A. I here produce same. By referring to the proof of death I find that the proof was received by us on the 27th of September, 1909, and the papers show and I recollect the case now, that a man who was at that time in the employ of the Company told me that this man Austin had died some year previously. The policy was payable to James Gregory, who lived in Bridgeport. Austin lived and died in New Britain.

Gregory was apparently unaware of the fact that Austin had died, and on September 14, 1909, I wrote to Gregory personally and told him of the fact, after which he made proof of death claim for the proceeds of the certificate.

Mr. Jones (Q.): And was the claim approved and listed for payment after that date? A. It was approved and was paid and listed in Call 126.

Mr. Jones (Q.): Was that the next succeeding call after the claim was made? A. It was.

The defendant here offers in evidence the deposition of Arthur M. Bunce, which said deposition is as follows:

Mr. Haid: Mr. Morrow, does your waiver apply to objections with reference to testimony of Mr. Bunce also?

Mr. Morrow: Yes, we will let the waiver go as to him.

**ARTHUR M. BUNCE,**

having been duly sworn by Miss Nellie W. Annis, in answer to interrogatories by Mr. Jones, testified as follows:

**Direct Examination.**

Q. State your full name, residence, age and occupation. A. Arthur M. Bunce; about 40 years; residence Hartford, Connecticut; assistant secretary of the Security Company.

Q. By the Security Company you mean the Security Company of Hartford, Cinnecticut? A. Yes.

Q. That is the company which has the handling

of the Men's Safety Fund Division of the Hartford Life Insurance Company? A. Yes, sir.

Q. And as assistant secretary of that Company are you familiar with that fund, the amount on hand in that fund December 31, 1909? A. Yes, sir.

Q. Will you please state the amount on hand in that fund December 31, 1909, giving both the book or cost value and the par value of the securities in which the fund was invested. (Showing witness paper.) Is this a memorandum made by you at my request showing the amount of that fund? A. It is.

Q. It was taken from the records of your company? A. Yes, sir.

Q. Please state the amount. A. December 31, 1909, the Security Company as trustee for the Men's Division of the Safety Fund Department held securities amounting to par value of $989,451.88, and the cost value of those various securities at that time was $1,038,639.19.

**Cross-Examination**, by Mr. Morrow.

Q. What was this fund invested in, what securities? A. On December 31, 1909?

Q. Yes. A. It was then invested in funds legal for life insurance companies.

Q. What life insurance companies? A. Any life insurance companies of the State of Connecticut.

Q. Tell me what life insurance companies? A. Well, the Aetna.

Q. How much did you have of the Aetna? A. You misunderstood me. It was invested in securities which were legal investments for life insurance companies of the state.

Q. I am trying to inquire what securities they were. A. They were railroad.

Q. What railroad? A. New York, New Haven and Hartford.

Q. How much did you have of that? A. I should have to look those matters up in detail.

Q. Then you don't know? A. I don't pretend to carry those things in my head.

Q. Was it stock or bonds? A. New Haven stock.

Q. What was New Haven stock worth at that time? A. Can look these matters up. I don't know.

Q. How much New Haven stock did you have at that time? A. My recollection is we had 133 shares.

Q. What did you pay for it? A. I don't know without reference to the records. It can be ascertained and I will ascertain it for you if you like.

Q. What was it worth on December 31, 1909, per share on the market in Hartford? A. I don't know.

Q. When did you know? A. The last time I looked at the quotations for that date.

Q. When was that? A. I couldn't say.

Q. Well, what was the par value—face value of those 133 shares? A. One hundred dollars a share.

Q. What other railroad securities did you have? A. I think in order to testify correctly I should be allowed to bring with me a list of the securities of this fund, which I would be very glad to do.

Q. Then you don't know what other railroad stocks you had? A. I don't intend to testify from memory on a fund of this size.

Q. Can you mention any other railroad other than the New York, New Haven & Hartford Railroad Company? A. I think we had some stock of the St. Joseph, Denver & Southern Railroad.

Q. When did you get that? A. I couldn't say.

Q. About what time? A. I don't know.

Q. What did you pay for it? A. I don't know.

Q. What was the face value per share? A. One hundred dollars.

Q. Can you state within a thousand dollars how much you held of that at that time? A. No, sir.

Q. You have no idea now from memory? A. No, sir; I don't pretend to charge my mind with such things.

Q. What was that stock worth on the market in Hartford or New York City on December 31, 1909? A. I don't know.

Q. What other stock did you have this fund invested in at that time? A. We had some bank stocks.

Q. What stock? A. Phoenix National Bank of Hartford and Aetna National Bank of Hartford.

Q. All of Hartford? A. Yes, sir; Hartford National, Farmers and Mechanics, National Exchange and American National.

Q. About how many dollars did you have invested in the stock of those banks at that time? A. I don't know.

Q. What did you pay for it? A. I don't know.

Q. The face value was $100 per share. A. Not all, American National Bank, $50; National Exchange, $50; and the Hartford National was $50.

Q. Did you have the investment of these funds for your Company? A. No, sir.

Q. Did you actually purchase them? A. No, sir.

Q. Did you actually sell any of them yourself? A. No, sir.

Q. Well, the only way you know is what somebody

told you? A. No, sir; I know by the records I have kept of this fund for the last fourteen years.

Q. I am talking about the stocks themselves, the only way you know is what somebody told you about them? A. I know by the records of the Security Company.

Q. Not from any record that you made—you didn't buy them, did you? A. No, sir; I had no authority to buy.

Q. And you didn't sell them? A. No, sir.

Q. Any other stocks that you had this fund invested in? A. I have endeavored to name them all from my recollection.

Q. How much money did you have invested in these various stocks on December 31, 1909? A. I think you asked me that and I told you I didn't know.

Q. Do you know now? A. No.

Q. About how much, coming within $100,000 of it, from memory? A. I wouldn't want to testify within $100,000 of anything; I want to get the figures and testify from them.

Q. This memorandum which you have here, and which Mr. Jones handed you when you read off those figures, in whose handwriting is that? A. Mr. Jones'.

Q. And you didn't make those figures? A. I didn't make those figures, but Mr. Jones copied those from figures which I did make.

Q. Where are those figures which you made? A. I haven't them with me now.

Q. How do you know Mr. Jones made them? A. I saw him.

Q. Did you read it back to see whether it was right or not? A. Yes, sir.

Q. Your Company has not lost any money for this Safety Fund Deposit, has it, by investments to your knowledge? A. Hasn't lost any money?

Q. Yes. A. No, sir.

Q. It has made money all the time, hasn't it? A. No, sir.

Q. In the whole, the investments have been advantageous, haven't they? A. To the Security Company?

Q. No, to the fund. A. I think they were.

Q. Your trust was well invested and you made money for them? A. Yes, sir.

Q. When did this fund reach the $1,000,000 point? A. In 1894, to the best of my knowledge and belief.

Q. You kept the books yourself? A. No, sir.

Q. When did you commence working on the books yourself? A. In 1898.

Q. How much did it exceed the million dollars from deposits of members in the Men's Division when you went to work on the books? A. Nothing.

Q. Hasn't there ever been a time when you have had more than one million dollars in your hands in the Men's Department of the Safety Fund? A. No, sir.

Q. At no time? A. No, sir.

Q. Just got right up to a million? A. Yes, sir; in 1894.

Q. And immediately stopped when it got to the million? A. That was the contract.

Q. I am talking about the facts? A. Yes, sir.

Q. You never have had a dollar deposited with you over one million dollars? A. There may have been an instance, so to speak, during transit of moneys which were deposited with the Security Company, when the Security Company held more than one mil-

lion dollars, but it was held for the purpose of being paid back to the Hartford Life Insurance Company for the members of the Safety Fund and was never considered by the Security Company as in its hands for investment.

Q. Will you please just answer my question. Was there ever any time that there was more than one million dollars in the Security Company from deposits received from members, in this fund? A. Never more than one million dollars in the hands of the Security Company for investment. As trustee for the Safety Fund of the Men's Division, the Security Company never held for investment more than one million dollars.

Q. Is it a fact that after the million dollar point was reached the Hartford Life Insurance Company never turned over to you these ten dollars on the thousand of deposits that were received from membership? A. That is not a fact.

Q. Did they turn it over to you? A. Yes, sir.

Q. How much did they turn over to you after it reached one million dollars? A. They turn it over now.

Q. About how much? A. I couldn't say.

Q. You don't know how many dollars over and above the million dollars you have had in your hands in these deposits since 1894, do you? A. No, sir.

Q. It might run up into hundreds of thousands of dollars, mightn't it? A. I wouldn't say.

Q. You have a general knowledge? A. No, sir; there are too many items.

Q. Did you have any deposits in 1909 over and above the million in your hands? A. We received deposits in 1909 from the Hartford Life Insurance

Company which, had we held them, would have been over one million dollars.

Q. You got them, didn't you? A. Yes, sir.

Q. They were in your hand while the Company held one million dollars? A. Not for investment.

Q. You had them there? A. Yes, sir.

Q. About how much did you have that year? A. It was a small amount that year.

Q. About how much? A. I wouldn't testify to how much.

Q. Have you, from time to time, made written reports to the Hartford Life Insurance Company of your trusteeship in that matter? A. Yes, sir.

Q. Did you make them? A. Yes, sir; for the last fourteen years.

Q. Do you know where they are? A. In my office.

Q. They are in the form of written reports? A. Yes, sir.

Q. Did you examine them when you were preparing those figures here? A. Yes, sir.

Q. Now you say at no time you held more than one million dollars in this Safety Fund on deposits, after it reached the one million dollar mark? A. I didn't say that. I said there was no time when we held for investment more than one million dollars.

Q. A number of times since that fund reached the million dollar limit there have been deposits of more than two hundred thousand dollars, haven't there? A. You refer to par value?

Q. I am talking about money paid in to your Security Company. A. There never was a time when more than one million dollars par was invested in the Safety Fund.

Q. You had one million dollars deposited with you in the Safety Fund? A. Yes, sir.

Q. Now, after that the Hartford Life Insurance Company when it received these ten dollar payments from members, they handed them over to you under the contract? A. Yes, sir.

Q. And you got them? A. Yes, sir.

Q. About how much was that in addition to the million dollars? A. I don't know.

Q. Have you any idea? A. No, sir.

Q. Can you come within one hundred thousand dollars? A. Not from memory.

Q. Have any in 1909? A. Did we hold any?

Q. Yes. A. Only temporarily.

Q. If you held it temporarily, you held it? A. Not for investment.

Q. You had them in your hands in 1909? A. We had them, but not for investment.

Q. What did you do with that money? A. Paid it back to the Hartford Life Insurance Company.

Q. Did you take its receipt for it? A. Got its check.

Q. The Hartford Life Insurance Company checked that out, did they? A. Yes, sir.

Q. Tell me some stocks you lost money on in 1909 in investments. A. We didn't lose money on any stocks in 1909.

Q. How happened it if you invested this and didn't lose money on it that the par value depreciated over the face value? A. There were some bonds sold which didn't realize their par value.

Q. What do you mean by bonds sold? A. I mean a transfer of bonds from one party to another.

Q. When was that? A. Some time previous to 1909.

Q. About how long ago? A. Within a few years.

Q. What bonds were they? A. They were bonds of an irrigation company.

Q. Who purchased them? A. The Security Company, the trustee.

Q. When? A. I couldn't say exactly, in the early 80's.

Q. What was the name of that company? A. I should say the Southwest Irrigation Company.

Q. In the 80's; do you know what they paid for the bonds of that company? A. Not from memory.

Q. Do you know what they sold them for? A. Not from memory.

Q. You say the Security Company invested in securities like that in 1880? A. They were legal for life insurance companies in Connecticut.

Q. About how much did the Security Company invest in that project? A. I think it was $10,000.

Q. How much did they lose on it? A. I wouldn't attempt to testify to these things from memory.

Q. About? A. In the neighborhood of $7,000. I would be very glad to furnish the figures of that accurately.

Q. Do you remember that the Security Company invested in securities of that class away back in 1880, from your own memory? A. It appears on the records.

Q. I am asking you if you remember it? A. No.

Q. You don't know whether they did or not, do you? A. To the best of my knowledge and belief they did, but I don't remember that they did.

Q. You don't know anything about this except what

somebody told you, do you? A. I know from the books of the Security Company, their records.

Q. And that is what you are testifying from now. You don't know how much was invested in that particular thing? A. I don't attempt to testify from memory to those figures away back there.

Q. What other securities was this fund invested in away back there, other than government bonds? A. Municipal bonds, railroad bonds.

Q. Invested in railroad stocks and bonds and municipal bonds and mortgages? A. Yes, sir.

Q. From 1880 on up? A. Yes, sir.

Q. Well, you paid interest on this fund for how many years? A. Paid interest?

Q. Yes. A. To the Certificate Holders?

Q. Do you pay interest? A. I don't understand the question.

Q. Did your Company pay interest on this deposit of one million dollars and the surplus over a million dollars when you had it and kept it? A. We paid back to the Hartford Life Insurance Company interest earned on the fund.

Q. Then you paid the Hartford Life Insurance Company interest? A. The interest that the fund earned.

Q. How much interest did you pay them, I mean per cent? A. Whatever the bonds yielded, minus the expenses.

Q. Is that the way that fund was carried on? You paid them whatever the bonds yielded? A. The gross income of the fund minus the expenses of handling it; the net income was turned over to the Hartford Life Insurance Company.

Q. Suppose there was cash deposited with you,

what about that? A. After the fund reached one million dollars if cash was deposited with us by the Hartford Life Insurance Company, during any six months, it was turned over to the Hartford Life Insurance Company at the end of the six months.

Q. Did you pay interest on it? A. We paid interest at two per cent on any cash balance that we held.

Q. When did you commence to do that? A. I think we practically always did that.

Q. Ever since 1880? A. Yes.

Q. Your records show that? A. Yes, sir; I should say earlier than that.

**Redirect Examination**, by Mr. Jones.

Q. You have testified concerning the Men's Safety Fund that on December 31, 1909, the book or cost value thereof was $1,038,639.19, and that the par value of the securities in which that amount of money was invested was $989,451.88. Where did those figures come from? A. They came from the records of the Security Company as shown by their books.

Q. You don't pretend to carry the amount in your head at any time? A. No, sir.

Q. You also had a Women's Safety Fund, didn't you? A. Yes, sir.

Q. And did you give me on this memorandum from the books the amount invested at that time in that fund? A. I did.

Q. And what was the book value of the Women's Fund and the par value of the Fund?

Mr. Morrow: I object to the witness looking at the paper. If he has a copy of his books he can submit it.

A. On December 31st, 1909, the Women's Division of the Safety Fund had securities of a book value of $127,715.10, the par value of the securities being $121,470.85.

Q. You are reading now from a memorandum? A. I am.

Q. And that memorandum was prepared from what? A. From the books of the Security Company.

Q. You are now testifying at the office of the Hartford Life Insurance Company, in Hartford, Connecticut, which is on what street in Hartford, Connecticut? A. Corner of Ann and Asylum streets.

Q. Is the Security Company located in Hartford? A. It is.

Q. On what street? A. Pearl street.

Q. How far from the office of the Hartford Life Insurance Company? A. A quarter to a half a mile.

Q. And the books and records of the Security Company pertaining to the Safety Fund, both the Men's Division of the Safety Fund and the Women's Division of the Safety Fund, all of the records concerning those funds, are where? A. At the office of the Security Company.

Q. Now Mr. Morrow has asked you as to the number and amount and the class of various stocks, bonds or other securities in which the Men's Safety Fund is invested. State whether or not the amount of the several stocks and the costs thereof, and the selling price thereof, wherever they have been sold or exchanged for other securities, appear on the records of the Security Company? A. They do.

Q. And those records are accessible? A. They are.

Q. And you are free to show them to Mr. Morrow? A. I am.

Q. And when you have stated that you could not or would not testify as to the particular amounts or particular characters of stocks or the value thereof on a particular day, did you mean by that to say that you refused to testify or that you simply did not carry those figures in your head? A. I did not mean to refuse to testify. I don't attempt to carry that mass of figures in my head for the purpose of testifying exactly.

Q. And all of those things about which he inquired of you can be ascertained from the books of the Security Company? A. They can.

Q. Now when you stated in answer to Mr. Morrow's question that this Safety Fund at no time exceeded one million of dollars, did you mean, as you afterwards stated, that it at no time exceeded one million dollars cost value? A. I meant that it at no time exceeded one million dollars par value.

Q. Now after the fund reached one million dollars par value in addition to the income or interest on that fund, did or did not the Hartford Life Insurance Company pay over to you from time to time subsequent ten dollar payments made by the members for deposit to the Safety Fund? A. They did.

Q. Were those payments received by the Hartford Life Insurance Company of $10 per thousand to the Safety Fund and by the Hartford Life Insurance Company turned over to you after the fund reached one million dollars par value, ever invested by you? A. No, sir.

Q. What was done with those contributions when and after the Safety Fund amounted to $1,000,000 par value? A. We kept two accounts, one of principal and one of income. In the principal account

we carried cash for investment to make the balance of the fund up to $1,000,000 par value; the cash came from the sale of securities. All receipts of cash from the Hartford Life Insurance Company which are derived from the $10 assessments are credited to this income account.

Q. After what time? A. After the fund reached $1,000,000 par value. At the end of each six months the Hartford Life Insurance Company drew from us all moneys in that income account, which then included interest from the various securities and whatever they may have handed to us during the six months elapsed.

Q. And was that income, including the payment of ten dollars, after the fund reached a million dollars par value, paid over to the Hartford Life Insurance Company semiannually? A. Yes, sir.

Q. And on what date? A. It was reckoned as of the 30th of June and the 31st of December, and subject to their check from that time on.

Q. As to the *corpus* of that fund, was that subject to their check at all? A. No, sir.

Q. Only the income? A. Yes, sir.

Q. And the income increased by the payments of ten dollars per thousand made by members after the *corpus* of that fund reached one million dollars par value? A. Yes, sir.

Q. Now in the Trustees' contract, a copy of which has been introduced in evidence in this case, being contract between the Hartford Life Insurance Company and the Security Company, attached to the policies in suit, it is provided that the ten dollar payments made by members when received by the Security Company shall be invested by the Security Com-

pany in United States bonds. By an act of the Legislature and the General Assembly of the State of Connecticut, approved April 10, 1889, it is enacted that the Security Company may invest the Safety Fund in such other securities, in addition to United States bonds, as life insurance companies of this state are by law authorized to invest them, instead of being compelled to invest all of said fund in United States bonds. Now do you know whether or not the fund was invested exclusively in United States bonds up to 1889?

Mr. Morrow: I object to the question as leading and suggestive.

A. It was invested in United States bonds exclusively up to 1889.

Q. And after 1889 was it or not invested exclusively in United States bonds? A. After 1889 it was not invested exclusively in United States bonds.

Q. In Mr. Morrow's questions to you he first referred to the date 1880 and then after a series of questions asked you whether "back there" the Company had invested the Safety Fund in municipal bonds, railroad bonds and similar classes of securities, and you answered that it had. Is that statement correct? A. It is not correct. I wish to ask Mr. Morrow to allow me to correct that statement.

Q. What is the correct statement? A. That date 1880 should be changed to 1890.

Q. And the fact is what in respect to investments prior to 1890? A. That they were entirely invested in United States bonds.

Q. But afterwards it was not entirely invested in United States bonds? A. It was not.

Q. Now these Southwestern Irrigation bonds, were they purchased after 1890 and after the Act of the Legislature or before? A. After the Act of the Legislature.

Q. And if you stated in answer to Mr. Morrow's question that they were prior to 1889, was that an error, and what is the fact? A. It was an error in my statement.

The defendant offers to give the plaintiff's counsel access and the right to inspect any and all of the books of the Security Company appertaining to the Safety Fund, and its administration, and offers either to go with the plaintiff's counsel to the office of the Security Company and examine those books or cause to be produced here for the examination by plaintiff's counsel, any and all books or records which he may desire to inspect.

Mr. Morrow: On behalf of the plaintiff I wish to thank the gentleman for his courteous offer, but in order that the plaintiff's case can properly be heard in regard to these books we would say that we have had no opportunity to examine except by taking depositions, we are away from home and here at Hartford. We thought we had gone the limit when we agreed that copies might be offered and books not taken away in order that a proper hearing of this case might be had, and we will have to insist that the rule not be violated now.

Mr. Jones: In answer to which defendant's counsel again tenders to the plaintiff an inspection here and now of any of the books he desires to examine. I have not the books here, but I will have produced for counsel any book that he may want from the Security Company, that he may designate, or I will

go to the office of the Security Company with him, which is within one-fourth to one-half of a mile of the place where these depositions are being taken, and let him examine any record pertaining to the record.

I, Nellie W. Annis, a Notary Public, within and for the town and county of Hartford, State of Connecticut, do certify that in pursuance of the attached notice, came before me, at Hartford, in the County of Hartford, and State of Connecticut, Thomas F. Lawrence and Arthur M. Bunce, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined and their examinations reduced to writing by me, their signatures to said depositions being waived, and their said depositions are now herewith returned.

And I further certify that said Thomas F. Lawrence and Arthur M. Bunce are residents of the County of Hartford in said State of Connecticut.

Given at Hartford, in the County of Hartford, and State of Connecticut, this 30th day of September, A. D. 1912.

Nellie W. Annis,
Notary Public.

State of Connecticut, } ss.
County of Hartford. }

Hartford, September 30, 1912.

It is hereby certified that Nellie W. Annis on the 17th day of September, A. D. 1912, was and now is a Notary Public within and for the said State of Connecticut, duly commissioned and acting as such, and

that full faith and credit are due to her acts as such.

In testimony whereof, I, George A. Conant, Clerk of the Superior Court for Hartford County, have hereunto subscribed my name and affixed my seal of office this 30th day of September, A. D. 1912.

(Seal)

George A. Conant,
Clerk of the Superior Court for
Hartford County.

Mr. Haid: Now, if the Court please, from the General Statutes of Connecticut, which are entitled "The General Statutes of Connecticut. Revision of 1902. In force July first, 1902. With the Constitution of the United States and the Constitution of the State of Connecticut. Published by authority of the State. Hartford Press. The Case, Lockwood Brainard Company, 1912", from which we desire to offer Section Six Hundred Nineteen, the same being as follows:

> "When parties are numerous one may represent all. When the persons who might be made parties are very numerous, so that it would be impracticable or unreasonably expensive to make them all parties, one or more may sue or be sued or may be authorized by the Court to defend for the benefit of all."

From the same statutes the defendant offers in evidence Section Six Hundred Twenty, the same being as follows:

> "Section 620. Trustee of express trust may sue or be sued alone. An executor, administrator, or trustee of an express trust, may sue or be sued, without joining the persons represented by him and beneficially interested in the suit."

Mr. Haid: I want to offer in evidence the section of the statutes and constitutional provision with reference to the jurisdiction of the Court that determined the Dresser case, the Superior Court of New Haven County.

Mr. Morrow: You can leave the section blank and fill them in after.

Which said sections are as follows:

**Article Fifth, of the Judicial Department.**

Section 1. The judicial power of the State shall be vested in a Supreme Court of Errors, a Superior Court, and such inferior courts as the General Assembly shall, from time to time, ordain and establish; the powers and jurisdiction of which courts shall be defined by law.

**Title Six. Civil Actions. Chapter 46. Jurisdiction and Venue.**

Section 535. **Concurrent Jurisdiction.**—All civil actions for equitable relief only, or for legal relief, wherein the matter in demand exceeds five hundred dollars and does not exceed one thousand dollars, and all civil actions for both equitable and legal relief, wherein the equitable and legal relief, severally and distinctly demanded, exceed one thousand dollars, may be brought either to the Superior Court or to the Court of Common Pleas; provided that said actions which are within the territorial jurisdiction of the District Court of Waterbury may be brought either to that court or to the Superior Court.

Section 536. **Jurisdiction of the Superior Court.**—All civil actions wherein the relief, legal or equitable, severally and distinctly demanded, exceeds one thousand dollars, shall be brought

to the Superior Court; but civil actions in Fairfield County, in which the relief demanded as aforesaid exceeds five hundred dollars and does not exceed two thousand dollars, including therein appeals from the doings of commissioners or insolvent estates, may be brought or taken to the Superior Court or the Court of Common Pleas.

Mr. Haid: We now offer in evidence an exemplified copy of the record in the case of Charles H. Dresser v. Hartford Life Insurance Company, and others, which was determined by the Superior Court of New Haven County, Connecticut, and that is to be marked Exhibit 8. The same being as follows:

Exhibit 8 is a complete exemplified transcript of the record in the case of Dresser *et al.* vs. Hartford Life Insurance Company *et al.*, which contains copies of the decisions and decrees already appearing in this abstract as Exhibits "B" and "C" to the defendant's amended answer.

Defendant here offers in evidence a certified copy of the mandate of the Supreme Court of the United States. The same being as follows:

United States of America—ss.

The President of the United States of America,

To the Honorable, the Judges of the Supreme Court of the State of Missouri—Greeting:

(Seal)

Whereas, lately in the Supreme Court of the State of Missouri, before you, or some of you, in a cause between Hartford Life Insurance Company, appellant, and Rosa Barber, respondent, No. 17664, wherein the judgment of the said Supreme Court, entered

in said cause on the 30th day of March, A. D. 1916, is in the following words, viz.:

"Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Johnson County rendered, be in all things affirmed, and stand in full force and effect, and that the said respondent recover against the said appellant her costs and charges herein expended and have therefor execution," as by the inspection of the transcript of the record of the said Supreme Court which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and seventeen, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel; on consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, reversed with costs; and the said appellant, Hartford Life Insurance Company, recover against the said respondent, two hundred and two dollars and seventy cents for its costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court. November 19, 1917.

And the same is hereby remanded to you, the said Judges of the said Supreme Court of the State of Missouri, in order that such execution and further proceedings may be had in said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-seventh day of December, in the year of our Lord one thousand nine hundred and seventeen.

James D. Maher,
Clerk of the Supreme Court of the United States.

State of Missouri—Set.

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete copy of the mandate of the Supreme Court of the United States in the above-entitled cause, as the same appears of record and on file in my office.

Given under my hand and seal of said Court, at the City of Jefferson, this 19th day of November, 1918.

(Seal)

J. D. Allen,
Clerk.
By Patricia Nacy, D. C.

Defendant here offers in evidence certificate of Mr. T. F. Lawrence and the affidavit of Mr. Benton, concerning the mailing of the notice to the insured, Exhibit No. 9.

Plaintiff objects to the paper offered, purporting to be a certificate of Thomas F. Lawrence, and the affidavit of Collins W. Benton, attached thereto, for the following reasons:

First. Because both said alleged certificate and affidavit are incompetent evidence to prove or disprove any of the facts or issues in this case, under the law, and are *ex parte* and the plaintiff had no opportunity to cross-examine said parties as to the truth of any of the facts stated therein, and that they are absolutely inadmissible in evidence, under the law of Missouri.

Second. Because the defendant and Frank Barber could not by contract change the law of evidence in Missouri, and render said papers as competent evidence and had no right or authority to bind the courts of Missouri or this plaintiff, by said agreement, as to the competent and proper way to prove facts, and as to the procedure of the courts of Missouri.

Third. Because it is not shown that the alleged certificate is the certificate of Thomas F. Lawrence, or that he was secretary of the defendant company at the time it was made.

Fourth. Because the testimony of the said Thomas F. Lawrence, heretofore offered by the defendant, shows he has and had no knowledge of the facts stated in said certificate.

Fifth. Because it is not shown that the address of Frank Barber, set out in said certificate of said Law-

rence, was the address of said Frank Barber, appearing at the time on the defendant company's books.

Sixth. Because under the clause of the policy, which if binding on this plaintiff in this court, which we deny, the person making the certificate must be the secretary of the defendant company at the time proof is made and not at the time the notice was mailed.

Seventh. Because the alleged certificate of the said Thomas F. Lawrence does not state that said notice was deposited in the United States Post Office or in the United States mails at Hartford, Connecticut, postage prepaid, but simply alleges the conclusion that the same, "Was mailed, postage prepaid, at the City of Hartford, in the State of Connecticut, January 29, nineteen hundred ten".

Eighth. That portion of said certificate of said Lawrence, stating that the address of Frank Barber as it then and thereafter appeared on the books of the Hartford Life Insurance Company, was "No. 4201 Pleasant Street, St. Louis, Missouri" is hearsay and incompetent, and is not even required to be certified under any provision of the policy and is inadmissible. That the address of Frank Barber cannot be proved in that way, either at the time of the mailing of said alleged notice or the alleged address as it appears on the books of the company.

Ninth. That portion of the affidavit of Collins W. Benton, "That it was the duty of Collins W. Benton to perform services of addressing and mailing the notices as provided in the policy," is objected to because that fact cannot be proved in that way, even under any provisions of the policy, and it has not

been shown by independent evidence that it was the duty of said Collins W. Benton to perform such services.

Tenth. The said affidavit of the said Collins W. Benton is objected to for the further reason that he does not swear in said affidavit that he actually mailed the notice in question, but he simply swears that they were mailed and he could not be convicted on perjury, even if the same had been mailed by another, because the same is hearsay.

Eleventh. It is not shown that the postage of said alleged notice was prepaid, but only that "A two-cent postage stamp" was placed on said notice. This Court will not take judicial notice of the size and weight of the "envelope so stamped".

Twelfth. That the following provision in the policy sued upon, "A notice directed to the address of the member, or other person designated by the member, appearing at the time on the company's books, shall be sufficient notice of any required payment, and a certificate of the secretary, supported by affidavit of the person whose duty it was to perform the service, of such addressing and of mailing of notice in post office at Hartford, shall be taken and admitted as conclusive evidence of such addressing and mailing and be admitted as conclusive proof of due notice to each and every person interested herein", is not binding upon the plaintiff, or the courts of Missouri, for the reason that it is an agreement relating to proceedings in the courts, and is inconsistent with the impartial course of justice as administered under the law of Missouri, and in direct conflict with the well-established rules of evidence in Missouri, and is against public policy and void and not enforceable.

It is clearly beyond the power of defendant or Frank Barber, by contract, to make a certificate and *ex parte* affidavit conclusive proof against the plaintiff in the courts of Missouri.

Thirteenth. I desire to make the further objection that the testimony of Collins W. Benton has been taken and is on file in this case, and it shows that he did not mail this notice and it explains the statement in his affidavit that they were mailed.

Objection overruled by the Court; plaintiff excepted at the time.

Which said certificate of T. F. Lawrence and affidavit of Mr. Benton are as follows:

Hartford Life Insurance Company, Hartford, Conn.

January 29th, 1910.

Frank Barber,
4201 Pleasant St., 15
St. Louis, Mo.

2-174416

This call which will be due March 1st, 1910, is made to meet 119 Deaths (as shown by accompanying list), Benefits, $322,378.48 and expenses on your policy, as follows:

| | |
|---|---|
| For Mortality Call | $13.09 |
| For Quarterly Dues to June next | 1.50 |
| Credit | $14.59 |
| Dividend to be applied if payment be made | 1.40 |
| Amount due | $13.19 |

Payment will not be accepted later than March 5, 1910, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including March 15, 1910.

Unless the payment called for by this notice shall be paid to the Company at its Home Office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to Hartford Life Insurance Company.

Make all remittances by Draft, P. O. or Express Money Order when possible. Letters containing currency must be registered.

Attached to certificate of T. F. Lawrence and affidavit of C. W. Benton.

Conrad A. Wright,
Notary Public.

Special notice of quarterly call No. 126.

Your next quarterly call will fall due and be payable June 1, 1910.

See over for Special Notice.

Special Notice.

If the payment of the above Quarterly Call is not received at this office on or before *March 5, 1910, the last day allowed for payment in the above notice, a second notice will be mailed to the policyholder by registered letter, giving until *March 20, 1910, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this

office on or before *March 5, 1910, will be obliged to pay this fifty cent fee in order to have the policy unconditionally reinstated.

After *March 20, 1910, the limit allowed for payment under the registered notice, the Company reserves the right to require a medical examination as a condition of re-instatement.

*If residence is on or west of the meridian of Salt Lake, Utah, ten days additional time is allowed.

I, Thomas F. Lawrence, secretary of the Hartford Life Insurance Company, hereby certify that on January 29th, 1910, I was secretary of the Hartford Life Insurance Company; that notice of Mortuary Call No. 126 on Certificate Number 174,416 addressed to Frank Barber at No. 4201 Pleasant street, St. Louis, Missouri, was mailed, postage prepaid, at the City of Hartford, in the State of Connecticut, on January 29th, nineteen hundred ten; that the address of Frank Barber as it then and thereafter appeared on the books of the Hartford Life Insurance Company, was No. 4201 Pleasant street, St. Louis, Missouri; that the paper hereto attached is a true and correct copy of notice of Call No. 126 so sent to said Barber.

(Seal) Thomas F. Lawrence,
Secretary of the Hartford Life
Insurance Company.

Hartford, Conn., Sept. 20th, 1912.

Collins W. Benton, being duly sworn, on oath states that he is and on January twenty-ninth, nineteen hundred ten, was in the employ of the Hartford Life Insurance Company; that it is and then was his duty to perform the service of addressing and mailing notices of mortality calls levied and assessed

against Frank Barber; that on said January 29th, 1910, affiant caused to be prepared notice of Mortality Call No. 126, and addressed said notice to Frank Barber at No. 4201 Pleasant street, St. Louis, Missouri; that a copy of said notice so prepared is hereto attached; that said notice so prepared and addressed was enclosed in an envelope addressed to Frank Barber at 4201 Pleasant street, St. Louis, Missouri; that there was affixed to said envelope so addressed a two cent postage stamp and said envelope so stamped with said notice therein was deposited in the post office at Hartford on January twenty-ninth, nineteen hundred ten.

Collins W. Benton.

State of Connecticut, } ss.
County of Hartford. }

On this 30th day of September, 1912, personally appeared before me, Collins W. Benton, who being by me first duly sworn, states that the matters and things above set forth are true.

(Seal) Edward A. Wright,
Notary Public in and for ———
County, State of Connecticut.
State of Connecticut.

State of Connecticut, } ss.
County of Hartford. }

Edward A. Wright.

I, George A. Conant, Clerk of the County of Hartford, and of the Superior Court of said State, within and for said county, and keeper of the seal thereof, do hereby certify that Edward A. Wright, Esquire,

on the 23rd day of January, 1912, was, ever since has been, and now is, a Notary Public within and for said State, duly appointed, commissioned and sworn, with authority by the laws of this State to administer oaths, to take affidavits, depositions and the acknowledgment of deeds and other instruments; that his term of office commenced on the 23rd day of January, 1912, and will expire on the thirty-first day of January, 1914, and that his signature above written is genuine.

In testimony whereof, I have hereunto set my hand and the seal of said Superior Court, at Hartford, in said County and State, on this 1st day of October, A. D. 1912.

(Seal) George A. Conant, Clerk.

Defendant here offers and reads in evidence decision in the Court of Errors of the Court of Connecticut in the 80th Connecticut Report, the same being marked Exhibit 10.

Mr. Haid: I think in passing over this testimony I possibly omitted to offer in evidence all the exhibits that were attached to the deposition and I want them considered as offered in evidence.

The Court: That is all right, they will be so considered,.

Defendant here offers in evidence stipulation signed by counsel as follows, same being marked Exhibit 10, and in the same connection, offers with this stipulation Exhibits 12, 13, 14, 15, 16, 17, 18, 19, the same being as follows:

## DEFENDANT'S EXHIBIT 10.

In the Circuit Court of Johnson County, Mo.

Rosa Barber, Plaintiff,
vs.
Hartford Life Insurance Company, Defendant.
No. 4618.

Rosa Barber, Plaintiff,
vs.
Hartford Life Insurance Company, Defendant.
No. 4619.

It is hereby stipulated and agreed by and between Rosa Barber, Plaintiff, and the Hartford Life Insurance Company, Defendant, as follows:

First. That the paper hereto attached, dated February 4, 1890, purporting to be an application of Frank Barber for policy No. 128293, a copy of which is Exhibit "B" to the depositions of T. F. Lawrence heretofore taken in the above entitled cases, was signed by Frank Barber.

Second. That the paper hereto attached, dated August 23, 1893, purporting to be an application of Frank Barber for policy No. 174416, a copy of which is Exhibit "C" to the depositions of T. F. Lawrence heretofore taken in the above entitled cases, was signed by Frank Barber.

Third. That the envelope hereto attached, a copy of which is attached to the said depositions of T. F.

Lawrence, was originally sent by the Hartford Life Insurance Company; that Frank Barber erased the number "2637 N. Sarah street" and endorsed that which now appears in handwriting, "4201 Pleasant street".

**Fourth. That** on the postal card hereto attached, copy of which is Exhibit "R", to the deposition of said Lawrence, Frank Barber wrote in the blanks provided therefor the written words which now appear in said postal card, to-wit: "St. Louis, 3/12/6" and "4201 Pleasant street, St. Louis Mo.", and Frank Barber signed his name at the bottom of said card.

Fifth. That the paper hereto attached, being letter from Frank Barber, dated December 3, 1909, a copy of which is Exhibit "X" to the said depositions of T. F. Lawrence, was actually written and signed by Frank Barber.

Sixth. That the paper hereto attached marked "Registry Return Receipt, Orig. Reg. No. 2026", a copy of which is made Exhibit "U" to said depositions of T. F. Lawrence, was signed by Frank Barber, which notice and accompanying documents are marked Exhibits "S-1" and "S-2" to the said depositions of T. F. Lawrence.

Seventh. That the paper hereto attached marked "Registry Return Receipt, Orig. Reg. No. 2197", copy of which is made Exhibit "V" to said depositions of T. F. Lawrence, was signed by Frank Barber, which notice and accompanying documents are marked Exhibits "T-1" and "T-2" to said depositions of T. F. Lawrence.

Eighth. That the letter hereto attached without

date, a copy of which is Exhibit "G-G" to the said depositions of T. F. Lawrence, was written and signed by Frank Barber.

(Signed) Robert Kelley and Chas. E. Morrow,
Attorneys for Plaintiff.

(Signed) Jones, Hocker, Hawes and Angert,
Attorneys for Defendant.

(Attached to this stipulation are the originals of each of the documents enumerated therein, copies of which already appear in this abstract, marked as stated in the stipulation.)

Defendant offers in evidence the deposition of Collins W. Benton, taken on November 9th, 1918, the same being as follows:

## NOTICE TO TAKE DEPOSITIONS.

In the Circuit Court of Johnson County, State of Missouri.

Rosa Barber, Plaintiff,
vs.
Hartford Life Insurance Company, Defendant.
No. 4619.

To the above named plaintiff, or Charles E. Morrow *et al.*, attorneys for said plaintiff:

You are hereby notified that depositions of witnesses to be read in evidence in the above entitled cause on the part of the defendant will be taken at the office of Hartford Life Insurance Company, in the

City of Hartford, Connecticut, on the 9th day of November, 1918, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day (commencing at 10 a. m.), and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

Jones, Hocker, Sullivan & Angert,
Attorneys for Defendant.

Service of the above notice is hereby acknowledged and issue of dedimus and all exceptions as to time waived. These depositions may be taken in shorthand, then transcribed and signed.

Robert Kelly, Nick M. Bradley, Chas. Morrow,
Attorneys for Plaintiff.

Oct. 21, 1918.

Depositions of witnesses produced, sworn and examined on the 9th day of November, in the year of our Lord 1918, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the office of the Hartford Life Insurance Company, in the City of Hartford, County of Hartford and State of Connecticut, before Nellie W. Annis, a Notary Public within and for the State of Connecticut, in a certain cause now pending in the Circuit Court of the County of Johnson, in the State of Missouri, between Rosa Barber, plaintiff, and The Hartford Life Insurance Company, defendant, on the part of the defendant.

Appearances:

For plaintiff, Charles E. Morrow, Esq.
For defendant, Joseph P. Tuttle, Esq.

**COLLINS W. BENTON,**

of lawful age, being produced, sworn and examined on the part of the defendant, deposes and says:

Q. Will you give your name, age, residence and occupation? A. My name is Collins W. Benton, age 47; 300 Farmington avenue; vice-president and secretary of the Hartford Life Insurance Company.

Q. How long have you been connected with the Hartford Life Insurance Company? A. Since 1897.

Q. In what capacity have you been engaged with that company? A. From 1897 to 1913 I was cashier; from 1913 to the present time I have been vice-president, and from 1916 to the present time I have been secretary.

Q. Are you also a director of the company? A. Yes, sir.

Q. How long have you been a director? A. Since May 14, 1912.

Q. Since you have been secretary of the Hartford Life Insurance Company have you had charge or have you been custodian of the records of the company? A. Yes, sir.

Q. And you are still such custodian? A. Yes, sir.

Q. Prior to your becoming secretary of the company and while you were cashier, was your position such as to bring you into intimate relationship with the executive officers of the company, particularly the president and the secretary? A. Yes, sir; it was.

Q. And that condition obtained for how many years? A. It has always obtained since I have been connected with the company.

Q. And so existed in 1909 and 1910? A. Yes, sir; it did.

Q. Do you know how the quarterly assessments upon the certificates of the Safety Fund Department were made up or the amount thereof arrived at during the time that you were the cashier of the company and prior to your becoming a director? I mean by this, how were those assessments made, the amount thereof determined, and how were they ordered? I mean, who made those assessments?

Mr. Morrow: I object to this question for the reason that the records are the best evidence of who made the assessments and it cannot be proven by parol. And I make the further objection that this witness cannot state now anything that occurred about these assessments.

Objection overruled by the Court; plaintiff excepted at the time.

A. Since I have been connected with the company all assessments have been made and levied by the president or the vice-president and the secretary of the company, under the supervision and direction of those officers.

Q. What record, if any, was kept of the levy of assessments during the years prior to 1912 and particularly during 1910? A. I don't think I quite understand the question.

Q. Will you substitute for "levy" what record was made of the making and ordering of the assessments by those officers that you have mentioned? A. We have in our files a letter or rather an order dated January 5, 1910, signed T. F. Lawrence, Secretary, which reads as follows:

Mr. Morrow: I object to the witness now stating the contents of any document or record. I under-

stand the question was only whether there was such a record and this would not be responsive to it and it would be further oral testimony of the witness as to the contents of the document and it would be incompetent and not the best evidence. And for the further reason that the letter is not a record in a sense of a levy of an assessment.

Objection overruled by the Court; plaintiff excepted at the time.

Q. During the years 1909 and 1910 what particular officers of the company supervised and made and ordered the assessments in the Safety Fund Department? A. Mr. George E. Keeney, President, and Mr. T. F. Lawrence, Secretary.

Mr. Morrow: I object to this for the reason that this question can only be proved by the records of the company itself as to what the corporation did, and oral testimony is incompetent.

Objection overruled by the Court; plaintiff excepted at the time.

Q. Is there any record kept by the president and secretary or by some clerk on their behalf, of their action in making, levying or ordering these quarterly assessments in the Safety Fund Department? A. Yes, sir; there is such an order.

Q. In what book are the records to be found of the action of the president and secretary levying these assessments? A. They are pasted in a book in which has been pasted a copy of the notice of the call and the list of deaths of the various calls.

Q. By whom are these records signed? A. Mr. T. F. Lawrence, Secretary.

Q. Have you a record in the book you have just spoken of of the levy and order of assessment of call No. 126 in the Men's Division, made as of December 31, 1909, and due March 1, 1910?

Objected to for the reason that the answer of that question calls for the contents of a written instrument and a record, and that the record itself is the best evidence. And for the further reason that the original is in the possession of the defendant and is the best evidence, and I don't see why these matters should be proven by parol testimony when the records are the best evidence.

Objection overruled by the Court; plaintiff excepted at the time.

A. Yes, sir.

Q. Is there any other record of the action of the president and secretary in levying that assessment other than that which appears pasted in the book to which you have just alluded? A. No, sir; not to my knowledge.

Q. Have you examined the records of the company to determine whether there is any such record? A. Yes, sir.

Q. And I understand you have found none? A. I have found none.

Q. Have you any personal knowledge of the names of the officers who made up these assessments or levied these assessments or calls during the years 1909 and 1910? A. Yes, sir.

Q. What opportunities did you have for knowing who made these assessments, what officers made them?

Plaintiff objects to that for the reason that the

record is the best evidence as to what officers made these assessments and it cannot be proved by parol.

Objection overruled by the Court; plaintiff excepted at the time.

A. I was in rather close contact with the officers of the company and when the officers had determined on the ratio to be applied and the levying of the assessments I was informed by the officers of the company.

Mr. Morrow: I move to strike out the answer for the reason that it is not responsive to the question and for the further reason that it is hearsay and information that the witness has received from some officers of the company.

Motion overruled by the Court; plaintiff excepted at the time.

Mr. Morrow: I object to the continuation of this answer as to what this information was, because it is hearsay and not responsive to the question.

Q. And with respect to call No. 126 by what officers of the company were you notified?

Mr. Morrow: I object to that for the reason that it is hearsay and does not bind this plaintiff, and for the further reason that any notification given to this witness by the officers of this company, of the assessment, is absolutely immaterial. It does not make any difference what the officers of the Company notified this man.

Objection overruled by the Court; plaintiff excepted at the time.

A. By Mr. Lawrence, the secretary of the company, and probably by the president of the company, Mr. Keeney.

Q. Are you able to state of your own knowledge whether Call No. 126 was made and levied in the same manner as the previous calls?

Plaintiff objects for the reason that it calls for a conclusion of this witness, and that the levies of assessment can only be proved by the record and as to whether or not they were done as previous calls will be determined by the records.

Objection overruled by the Court; plaintiff excepted at the time.

A. Yes, sir; it was.

Q. Will you read the record which you have of Call No. 126 in the book to which you have already referred?

Mr. Morrow: I object to this party reading this record into the deposition; first, because of the principle you cannot have a witness to read a record into a a deposition and make it evidence, and I desire to further object for the reason that it is not the best evidence, the original being the best evidence, and for the reason it is in the possession of the defendant, was then and is now; and I object for the further reason that they don't offer this in evidence at all, but simply to let it be read into this deposition.

Objection overruled by the Court; plaintiff excepted at the time.

Q. I will also ask you to make a copy of that which you are about to read and annex it to this deposition as "Defendant's Exhibit 1". A. January 5th, 1910. Mr. Mix, Office. Dear Sir: Call No. 126, Men's Division, is for 119 deaths amounting to $322,378.48 and the ratio is 4.20. Call No. 111, Women's Division, is

for 17 deaths, amounting to $21,500 and the ratio is 2.25. Yours very truly, E. F. Lawrence, Secretary.

Mr. Morrow: I move to strike that out for the reason that it is not a record kept by the office of this company in making his assessment. It is simply a letter written by the secretary of this company to a man in the office after it was already done, long afterwards, as the date is shown.

Motion overruled by the Court; plaintiff excepted at the time.

Copy of above letter, dated January 5th, 1910, annexed to this deposition, is offered in evidence, and marked "Defendant's Exhibit 1".

**"DEFENDANT'S EXHIBIT 1".**

No. 4619. Rosa Barber v. Hartford Life Insurance Co. "Defendant's Exhibit 1." Nellie W. Annis, Notary Public.

Hartford Life Insurance Co.,
Hartford, Conn.
T. F. Lawrence, Secretary.

Jan. 5, 1910.

L-G.
Mr. Mix,
Office.
Dear Sir:—

Call No. 126, Men's Division, is for 119 deaths, amounting to $322,378.48, and the ratio is 4.20.

Call No. 111, Women's Division, is for 17 deaths, amounting to $21,500, and the ratio is 2.25.

Very truly yours,
T. F. Lawrence,
Secretary.

Q. Will you produce them? A. I have before me the minutes of the meetings of the directors held May 11, 1909, and May 10, 1910.

Q. Will you read those minutes and will you also make a certified copy and attach them to your deposition as certified copies, as exhibits? A. Yes, sir.

Q. Will you read them?

Mr. Morrow: I object to the reading of this record into this deposition and to be read to this jury for the reason that it is not the best evidence for the reason that the minutes themselves are the best evidence as to what that meeting was; that they are now in the possession of defendant company and that this is secondary evidence. I object to it further for the reason that it is not shown by whom these minutes were kept and whether or not the officers of the company kept them; it is not shown in whose handwriting they were and it is not shown that it was kept by the proper officers of the company or whether in the regular course of business, and for that reason they are incompetent.

Objection overruled by the Court; plaintiff excepted at the time.

The Court: These rulings are made on the theory, I don't think it could be expected that the Hartford Life Insurance Company could be expected to bring their records here, and these extracts were read at the time and you were there and could cross-examine in regard to them.

Mr. Morrow: I ask that the original be offered here because there are certain things to be found in them, and certain things to be noticed about them that should be here for inspection.

A. Special meeting of directors. Hartford, May 11, 1909. At a special meeting of the Board of Directors of the Hartford Life Insurance Company, held at the office of the company at 10:30 o'clock a. m., this 11th day of May, 1909 (which directors were chosen at the annual meeting held on the same day), there were present:

Arthur F. Eggleston
Everett J. Lake
Lewis E. Gordon
Andrew Gordon
George E. Keeney
Raymond F. Keeney
R. B. Parker

President Keeney in the chair.

Separate ballots were had, resulting in the choice of officers for the ensuing year, and the following were declared elected:

President.....George W. Keeney
Vice-President.....Raymond G. Keeney
Second Vice-President.....Lewis E. Gordon
Secretary.....Thomas F. Lawrence

On motion it was voted to pay the following salaries for the ensuing year:

| | |
|---|---|
| President | $18,000.00 |
| Vice-President | 8,000.00 |
| Second Vice-President | 8,000.00 |
| Secretary | 6,000.00 |

On motion it was voted to authorize the president to appoint a Finance Committee and a Mortgage

Loan Committee, and the following appointments were made by the president for the ensuing year:

| Finance Committee | Mortgage Loan Committee |
|---|---|
| George E. Keeney | George E. Keeney |
| James H. Knight | Raymond G. Keeney |
| Raymond G. Keeney | Lewis E. Gordon |

Upon motion and vote the following resolutions were passed:

"That the executive officers of the company referred to in the following resolutions shall be the President, Vice-President, Second Vice-President and Secretary.

* * * * * * *

That any two of the executive officers are hereby invested with power to retain and secure the services of persons to perform the duties incident to the business of the company in respect of both office and field forces, with power also to fix and pay such compensation as they may agree upon with such persons, and they are hereby invested with discretionary general power to transact on behalf of this company all lawful business of every kind permitted by the charter, during the pleasure of the directors.

* * * * * * *

The minutes of the meeting were then read and approved. On motion it was voted to adjourn. Adjourned. A true copy. Attest: T. F. Lawrence, Secretary.

Mr. Morrow: I move to strike out this evidence for the reasons related in my objections and I make the further objection now since this is in evidence that under the charter of this company that the Board of Directors had no authority to delegate to two of its

executive officers the right to levy this assessment in question or the power to do so.

Motion overruled by the Court; plaintiff excepted at the time.

Minutes of meeting held May 11th, 1909, attached hereto, offered in evidence, and marked "Defendant's Exhibit 2".

Mr. Morrow: I make the same objections to the minutes as heretofore alleged.

Objection overruled by the Court; plaintiff excepted at the time.

Special meeting of directors. Hartford, May 10th, 1910.

At a special meeting of the Board of Directors of the Hartford Life Insurance Company, held at the office of the company at 10:40 o'clock a. m., this 10th day of May, 1910, (which directors were chosen at the annual meeting held on the same day), there were present: George E. Keeney, James F. Heady, Lewis Sperry, Andrew Gordon, John G. Hoyt, Lewis E. Gordon, R. G. Keeney, T. F. Lawrence. George E. Keeney in the chair.

Separate ballots were had, resulting in the choice of officers for the ensuing year, and the following were declared elected: President, George E. Keeney; Vice-Presidents, John G. Hoyt, Raymond G. Keeney and Lewis E. Gordon; Secretary, Thomas F. Lawrence.

On motion it was voted to pay the following salaries for the ensuing year:

| | |
|---|---|
| George E. Keeney, President..... | $12,000.00 |
| John G. Hoyt, Vice-President..... | 10,000.00 |
| Raymond G. Keeney, Vice-President | 8,000.00 |
| Lewis E. Gordon, Vice-President.. | 8,000.00 |
| Thomas F. Lawrence, Secretary... | 6,000.00 |

Upon motion it was voted to authorize the president to appoint a Finance Committee and a Mortgage Loan Committee, each to consist of three members, and the following appointments were made by the president for the ensuing year:

| Finance Committee | Mortgage Loan Committee |
|---|---|
| George E. Keeney | George E. Keeney |
| John G. Hoyt | Raymond G. Keeney |
| Raymond G. Keeney | Lewis E. Gordon |

Upon motion and vote the following resolutions were passed:

"That the executive officers of the company shall be the President, Vice-Presidents and Secretary."

* * * * * * *

That any two of the executive officers are hereby invested with power to retain and secure the services of persons to perform the duties incident to the business of the company in respect of both office and field forces, with power also to fix and pay such compensation as they may agree upon with such persons, and they are hereby invested with discretionary general power to transact on behalf of this company all lawful business of every kind permitted by the charter, during the pleasure of the directors.

* * * * * * *

The minutes of the meeting were then read and approved. On motion it was voted to adjourn. Ad-

journed. A true copy. Attest, T. F. Lawrence, Secretary.

Minutes of meeting held May 10th, 1910, attached hereto, offered in evidence, and marked "Defendant's Exhibit 3".

Mr. Morrow: I make the same motion to strike out as heretofore made.

Motion overruled by the Court; plaintiff excepted at the time.

Q. What is the name of the book from which you have just read? A. This is the record book of the minutes of the meetings of the stockholders and directors of the Hartford Life Insurance Company from May 10, 1904, to the present time.

Q. Will you state whether or not this record book and also the record book from which you read Exhibit 1 are books which are in constant and daily use by the Hartford Life Insurance Company? A. These books are in constant and daily use by the officers of the company and it is absolutely essential to the conduct of the business that these books remain in the office of the company. It would greatly interfere with the proper conduct of the business if they were removed from the office for any length of time.

Q. Have you now read all the records in the office relating to the levying, the making, and the assessing of assessments in the Safety Fund Department during the years 1909 and 1910 and particularly with reference to the assessment of Call No. 126? A. So far as I know; yes, sir.

Q. I think you have already stated that Call No. 126 was made in the same way as previous calls during your experience with the company?

Plaintiff objects for the reason that the records of the company are the best evidence as to how previous calls were made and assessments were made, and it cannot be proven by parol for the reason it is hearsay; objection overruled by the Court; plaintiff excepted at the time.

A. Yes, sir; it was.

Q. What action was taken after the receipt or delivery of notice signed by the secretary, Exhibit 1, what action was then taken toward the levying and collection of the assessment? A. You mean by the office force?

Q. Yes, by the office force or by the officers, either.

Plaintiff objects to that for the reason that what was done with reference to levying the assessment has to be proven by the records; objection overruled by the Court; plaintiff excepted at the time.

A. Separate and individual assessments were then figured and laid.

Q. I don't care for the detail.

Mr. Morrow: I object to that for the reason that the records are the best evidence.

Q. Is it, or is it not, a fact that upon the receipt of a notice from the secretary, such as Defendant's Exhibit 1 hereto attached, the office force then proceeded to the collection of the assessment without further action on the part of the officers? A. Yes, sir.

Q. Did the Hartford Life Insurance Company make a report to the Insurance Department of the State of Missouri for the years 1909 and 1910? A. Yes, sir.

Q. Will you state whether or not these reports were

on forms prepared by the company or forms prepared by the Insurance Department of the State of Missouri?

Mr. Morrow: I object to that for the reason that the original report is the best evidence as to what forms they were made, and it calls for the contents of a written instrument.

Objection overruled by the Court; plaintiff excepted at the time.

A. These statements were prepared and entered on forms which were furnished by the Insurance Department of the State of Missouri.

Q. Was the Hartford Life Insurance Company required by the State of Missouri to pay taxes on its premiums collected in the State of Missouri for the years 1909 and 1910?

Plaintiff objects to this witness answering that question for the reason that it calls for a conclusion of this witness and for the further reason that the levy and assessment of the tax by the State of Missouri can only be proven by the records of the State of Missouri and by competent evidence as to who levied it, and for the further reason that under the law of the State of Missouri there was no power or authority by anyone to levy or assess a tax upon the assessment of this policy of insurance.

Mr. Haid: If that is to be taken up, I think it would be better to take the balance of this evidence and show what the department did. This evidence shows that the department required this assessment

to be made and when returns were made the department notified the company to pay it.

Further reading of the deposition is temporarily suspended.

**M. D. ABER,**

being sworn upon the part of the plaintiff, testified as follows:

**Direct Examination**, by Mr. Jones.

Q. State your name, please. A. M. D. Aber.

Q. What is your occupation? A. Well, I try to practice law a little.

Q. How long have you been engaged in the practice? A. I was admitted to the practice about 24 years ago.

Q. Were you connected with the Insurance Department of the State of Missouri, and if so in what capacity? A. I was. I think the official title was Deputy Superintendent of the Insurance Department, from about the middle of November or December of 1909 until about the middle of April, 1913, I think.

Q. You were deputy superintendent during all of that period? A. Yes, sir.

Q. Mr. Aber, do you know what the departmental practice or the ruling of the Insurance Department of the State of Missouri was during that period with reference to the application of the statutes of the State which require a tax of two per cent of all premiums collected by an insurance company licensed to do business in this State, with reference to assessments?

Mr. Morrow: The plaintiff objects to that for the

reason that it calls for a period subsequent to the one in issue here; and I object further for the reason that parol testimony is not admissible as to any alleged levy of tax assessment in the State of Missouri upon premiums of assessment companies, and object for the further reason that under the decision of the Supreme Court of this State and the statutes the Department of Insurance or no other body had authority to assess or levy a tax, and that the law did not require such, and that the custom of the Insurance Department, if there was a custom, would be no defense in this case.

The Court: I am inclined to think your objection is good.

**Afternoon Session.**

Mr. Haid (Q.): (Read to the witness as follows) Mr. Aber, do you know what the departmental practice or ruling of the insurance department of the State of Missouri was during that period with reference to the application of the statutes of the State which require a tax of two per cent of all premiums collected by any insurance company licensed to do business in this State, with reference to assessments?

Objection upon the part of the plaintiff is here withdrawn.

A. As I told these gentlemen personally since being called as a witness, I didn't have a separate independent recollection. I have been pretty busy trying to make a living at the law practice in the country and that keeps a man busy, and my memory does not serve me absolute.

Mr. Morrow (Q.): The question is whether you know. A. I could only give an impression. I couldn't say that I know. I couldn't say that my memory served me absolutely. I have only an impression and that is hardly a memory. I hadn't thought of it, for I suppose five and a half years, until on yesterday when there was a little passage between Mr. Haid and myself over the matter and I thought then I remembered in regard to it, but I didn't. It is simply an impression that it was included. I would not say that I know that.

Q. Your impression was it was included?

Plaintiff objects to the question as leading and suggestive, and for the further reason that it is not responsive to the question, and moves to strike it out. The question is whether he knows.

The Court: Motion to strike out overruled. He says he has an impression they were included.

Plaintiff excepted at the time.

Mr. Morrow: He was not asked that question.

The Court: He has answered that way.

Q. Mr. Aber, there was a practice of the Insurance Department acting under the Section 7910 to make these assessments against these insurance companies, wasn't there?

The plaintiff objects to that for the reason that any act or course of the Insurance Department does not change the law of the State of Missouri.

The Court: No, it don't change it; but I will let him answer that.

Plaintiff excepted at the time.

A. There was a two per cent tax levy, I think pursuant to a Section 8706, I am not sure of the number of the section.

Mr. Morrow: We object to that, if the Court please, that calls for some records down there, of assessments, which cannot be proved by parol.

The Court: If it is within his knowledge that the assessment was made he can so state.

A. Well, there were assessments made against insurance companies based upon the premiums paid. I believe all of them. My recollection now is it was all of them. The statutes will show. Whatever the statutes provided for we did.

Q. Mr. Aber, do you recall the signature of the Insurance Commissioner of the State, who was acting at that time, in March, 1910? A. There is no commissioner in Missouri. It is superintendent.

Q. Well, superintendent. I supposed you would know what I meant. A. This paper you now hand me——

Mr. Morrow (Q.): He is not asking you what that paper is. A. That is all right. I would recognize the signature of the then superintendent of insurance. I think that is true, I would recognize the signature of the then superintendent of insurance, who was Mr. Frank Blake.

Q. Is that his signature to that paper? A. This signature on here I recognize is a rubber stamp containing an impression of his signature. That is a rubber stamp.

Q. And that was used by your department in signing the letters? A. Sometimes.

The plaintiff objects to that question as to who affixed it.

A. I will withdraw that answer.

Mr. Morrow: If that was done by a deputy it will have to be shown.

The Court: He can answer if it was the custom to affix the signature by rubber stamps.

A. Sometimes it was. Sometimes it wasn't. I never used a stamp. I sometimes signed his name to papers and sometimes, partially depending on the official nature, and sometimes papers were used with the rubber stamp, sometimes not. I know this is the impression of a rubber stamp of Mr. Blake's signature, but I don't know any more. I didn't make up the assessments that year. That was my first year in the office.

Q. Now, Mr. Aber, with reference to the practice of the department, arrive at the amount of taxes that was to be assessed against insurance companies?

The plaintiff objects to that. The statutes provide how this shall be assessed, and the assessments themselves would be the best evidence, if there is one in existence.

The Court: I suppose the statutes would govern that.

Mr. Haid: Well, the statutes govern in a way; the statutes say that the insurance companies shall make a return, and although they make no return that notwithstanding that fact the Superintendent of Insurance may assess. What I was trying to bring out by this evidence was that it was the practice of the department to send out blanks to these companies in a specific form. Now, in this instance here, they sent these blanks to a company that was doing both assessment and old line business. The blank only provided for a specific amount being shown, the total being

shown without reference to what kind of insurance it was, and the company returned them; but I wanted to show that these blanks were furnished to the company and were furnished in that form.

The Court: Well, if he knows, he can state.

Objection overruled; plaintiff excepted at the time.

Mr. Morrow: We are objecting to any assessment subsequent to 1910, because the witness says he don't know anything prior to that time; cannot testify to anything prior to that.

The Court (Q.): Well, in 1910, you can state. A. My memory does not serve me on that, Mr. Haid, since we talked about it. Maybe there were blanks sent out, but I can't remember it.

Mr. Morrow (Q.): Do you know what they did before you went there? A. No.

Mr. Morrow (Q.): He has not asked you about anything before you went there. A. I do not know anything about what they did before I went there.

Mr. Morrow (Q.): The blanks had been sent out for the year 1910, before you went there? A. I couldn't tell to save my life; I just don't know. This blank report, one of them Mr. Haid has indications of its being sent out about the time I went in the office, and I remember they did something like that; whether there was anything else, I forget now.

Q. Now, Mr. Aber, I will show you a report and will ask you if that is one of the reports or blanks which the department sent out to this company for execution? A. Yes, this is one of the blanks that was sent out; this certificate being copied and certi-

fied by myself, and I recognized it as one of the kind that generally were being used.

Q. Now, I call your attention to line 25, reading this way: "Premiums collected, or some in case and give the credit without any deduction for losses, dividends, commissions or other expenses, $171,504.39. A. I see that line, it reads as you have read it.

Q. I will ask you whether there was any further provision made for the return of amounts collected upon policies issued in this case?

The plaintiff objects to the question for the reason that if it was, it appears there, and oral testimony has got nothing to do with it. If it is on that blank you can find it, and that is all there is to it.

Mr. Haid: Mr. Aber, having been a Deputy Insurance Commissioner of the State, and knowing what these blanks show, can very readily call attention to the matter in that respect without having to look clear through all that matter.

The Court: What is the question?

Mr. Haid: I asked him whether provision was made in any part of the blank for the return of collection made for a company in Missouri other than the one specified in the line there that I called his attention to.

The Court: Well, if you know, you may state.

Mr. Morrow: I ought not to have the burden put upon me of having to go through all that. If it is there it ought to show for itself what it is. It is simply a written statement.

The Court: Just offer the instrument and it will show for itself.

A. As I said, Mr. Haid——

The Court: You need not answer that.

Defendant excepted at the time.

Witness excused.

**Reading of Deposition of Collins W. Benton, Continued.**

Q. Was the Hartford Life Insurance Company required by the State of Missouri to pay taxes on its premiums collected in the State of Missouri for the years 1909 and 1910?

Mr. Morrow: I object to that, as it calls for the conclusion of this witness and for the further reason that under the law of Missouri these assessments were not taxable. I object to that because this witness doesn't show that he was there or knows anything about it at all.

Objection overruled by the Court; plaintiff excepted at the time.

A. Yes, sir.

Q. Who computed the amount of such tax? A. The amount of the tax was computed by the Missouri Insurance Department.

Q. Do you know from what data that department computed taxes? A. It was computed from data shown in the annual report of this company to the Insurance Department of the State of Missouri.

Q. How would this company be notified of the amount of the tax?

The plaintiff objects to the question as to how it would be notified for the reason that the notice itself is the best evidence; objection overruled by the Court; plaintiff excepted at the time.

Mr. Morrow: If the Court please, I don't think you understand this situation. In the first place it calls for a conclusion of the witness, and in the second place it calls for the contents of a written instrument.

The Court: I know all that is a matter of record, and it would take a wagon to haul it.

Objection overruled; plaintiff excepted at the time.

A. The company received a letter demanding the amount of the tax on the assessments and premiums collected in the State of Missouri, which letter and demand were received from the Insurance Department of the State of Missouri.

Q. Did the Hartford Life Insurance Company send to the Insurance Department of the State of Missouri a report for the year ending December 31st, 1909? A. Yes, sir; it did.

Q. Have you a copy of that annual report? A. Yes, sir.

Q. Will you attach to your deposition as Exhibit 4 such copy of the annual report? A. Yes, sir.

Q. Has that been certified by the Superintendent of the Insurance Department of the State of Missouri? A. Yes, sir.

Report certified by Superintendent of Insurance Department of the State of Missouri, is offered in evidence and attached hereto, and marked "Defendant's Exhibit 4", is as follows:

**"Defendant's Exhibit 4" to Deposition of Collins W. Benton.**

"This exhibit was a certified copy of the Annual Statement of the Hartford Life Insurance Company

to the Superintendent of the Insurance Department of the State of Missouri for the year ending December 31, 1909, on page 7 of which appears the following:

"Business in the State of Missouri during 1909.

25. Premiums collected or secured in cash and notes or credits **without any deduction** for losses, dividends, commissions or other expenses.....$171,504.39

Q. Will you state whether or not in connection with this report, Exhibit 4, there was sent to the Hartford Life Insurance Company by the Insurance Department of Missouri such statement or bill for taxes as you alluded to in your previous testimony? A. There was received by the company an order or bill from the Insurance Department.

Q. Have you that order? A. Yes, sir. I have an order from the Missouri Insurance Department dated March 29, 1910.

Q. Will you read that into the record and also attach it to your deposition as Exhibit 5?

The plaintiff objects to that for the reason that it is not shown there ever was an assessment made in this instance, and in the second place it is not shown that this was the official act of the Superintendent of Insurance of the State of Missouri in sending out this order at all; objection overruled by the Court; plaintiff excepted at the time.

A. Insurance Department, State of Missouri. Jefferson City, Mo., March 29th, 1910. Hartford Life Insurance Company, Hartford, Conn. Dear Sir: I

hereby notify you that the amount of taxes due the State of Missouri from your company on premiums collected therein, in the year 1909, is two per cent, on $171,504.39 (as shown by schedule), $3,430.09 which you will please remit to Hon. James Cowgill, State Treasurer, Jefferson City, Mo., on or before May 1st, 1910, and he will receipt you therefor.

Very Respectfully,

Frank Blake,
Superintendent.

Letter dated March 29th, 1910, is offered in evidence as attached to this deposition, and marked "Defendant's Exhibit 5."

Q. What amount of assessments and legal reserve premiums were collected by the Hartford Life Insurance Company in the State of Missouri for the year ending December 31, 1909? A. The amount of premiums on the legal reserve business and the amount of assessments on the Safety Fund policies collected in the State of Missouri during 1909 amounted to $171,504.39.

Mr. Morrow (Q.): You are reading from something, you are not now testifying from your own knowledge. I want you to answer so as to get it in the record. Just answer the question. A. I give the same answer.

Mr. Morrow (Q.): I am asking you now whether you are not reading from something? A. Yes, sir.

Mr. Morrow (Q.): What? A. The records of the company.

Mr. Morrow (Q.): What record? A. The record showing the amount of premiums and assessments collected in the various states for the year 1909.

Mr. Morrow (Q.): Mr. Witness, were you reading from the record when you made the prior answer? A. No, sir; I took that from the statement of the Hartford Life Insurance Company to the Insurance Commissioner of Missouri, but I had already compared that with the record of the company.

Mr. Morrow: I object to this witness stating the contents and conclusions of records if they are in existence; the records themselves are the best evidence.

The Court: Do you still make the objection?

Mr. Morrow: I don't care anything about that.

Objection overruled by the Court; plaintiff excepted at the time.

Q. Under what heading in the report from the Insurance Department of the State of Missouri do you find the entry about which you were testifying when the interruption occurred? A. "Premiums collected or secured in cash and notes or credits without any deduction for losses, dividends, commissions or other expenses." That is under the heading "Business in the State of Missouri during 1909," which is on page 7 of the Annual Report of the Hartford Life Insurance Company to the Insurance Commissioner for the State of Missouri for the year ending December 31, 1909.

Q. Have you before you the book of original entry of the Hartford Life Insurance Company, showing the amount of reserve policy premiums and assessments collected by the Hartford Life Insurance Company in Missouri during the year 1909? A. Yes, sir; I have.

Q. What is the book in which these entries are made? A. State record of premiums, dividends, etc., of the Hartford Life Insurance Company.

Q. May I ask you whether that book is also one in constant and daily use by this corporation? A. This book is in almost daily and constant use by the company and it would seriously interfere with the proper business of the company if this book were taken out of the office for any length of time.

Q. Can you identify the page or pages upon your record which shows the Missouri business, just testified to, for the year 1909? A. That information is on the page headed "Missouri", under the date of "1909".

Q. This statement for the year 1909 all appears on one page? A. Yes, sir.

Q. Is it divided at all? A. The information?

Q. Yes. A. Yes, sir.

Q. How? A. Divided into the Safety Fund, Men's and Women's Divisions, Stipulated, Stock Department, etc.

Q. What is the total for the year 1909, as shown by that record? A. The total under the head "Safety Fund, Men", is $112,527.91; under "Women", $7,418.80. Under the head of "Stipulated", $46.76; and under the head "Stock Department", $51,525.32, less $14.40, which is under the head of "Stock Department, Returned Premiums", making a net amount of $51,510.92 for the Stock Department, the total being $171,504.39.

Q. Will you make a copy of this page of your record showing this business for the year 1909 and certify it and attach it to your deposition as Exhibit 6? A. Yes, sir.

(Copy of page showing business for 1909 attached to this deposition is offered in evidence and marked "Defendant's Exhibit 6.")

**DEFENDANT'S EXHIBIT 6 TO THE DEPOSITION OF COLLINS W. BENTON**

is a statement showing the amounts collected by the Hartford Life Insurance Company in each month of the year 1909 upon the various classes of policies of the company held by residents in Missouri, the aggregate under each head or class being the amount disclosed in the answer next before the last answer of the witness.

Mr. Morrow: Are you offering that in evidence now?

Mr. Haid: I am offering these as I go along. I understand all these exhibits to all these depositions are offered in evidence.

Mr. Morrow: I didn't understand that; I thought you were pretending to be reading something.

Mr. Haid: No, I am offering these as I go along.

Q. Why was there no distinction or separation made between the assessments in the Safety Fund Department and premiums on old line business, in your report to the Insurance Department of Missouri? A. The reason why there was no separation of the amount of premiums collected in the State of Missouri on the Legal Reserve business and the assessments on the Safety Fund business was that the form for making the returns which was furnished by the Missouri Insurance Department did not provide for any such separation.

Q. Did you at some time after the receipt of the letter which has been marked "Exhibit 4", receive a letter or bill from the Insurance Department of the State of Missouri with reference to the payment of the tax, a letter dated on or about March 29, 1910.

Mr. Morrow: We object to that for the reason that

it is not shown that there ever was such an assessment made in this case. The letter itself is the best evidence.

Mr. Haid: I see that that was withdrawn, and you may strike that out.

A. That is the letter.

Mr. Tuttle: You may strike that out, if you will; I thought there was an earlier letter.

Q. Have you a copy of a letter sent by this Company to the Insurance Department in Missouri dated on or about February 16, 1910, with relation to your annual report? A. Yes, sir; we have such a copy of a letter.

Q. Will you produce it? (Letter produced.)

Q. This is your office copy of the letter? A. This is the office copy of the letter which was taken from one of the copying letter books of the Company.

Q. Will you read that into the record, and will you also make a certified copy thereof and attach same to this deposition as Exhibit 7? A. "February 16, 1910. Insurance Department, Jefferson City, Mo. Gentlemen: We are handing you herewith check for $41 paying for filing of annual statement, which is being forwarded, and we enclose statement of total premium collections made in Missouri during 1909, amounting to $171,504.39. We call your attention to the fact that this includes post mortem assessments in Safety Fund policyholders from whom we collect their proportionate share of death losses to be paid, and that the tax assessed on these collections is an additional burden on Missouri policyholders, for which, we think, there ought to be some relief. Yours very truly, Second Vice-President."

Letter dated February 16, 1910, attached hereto, is

offered in evidence and marked "Defendant's Exhibit 7".

Q. Now, after the receipt of the letter of March 29, 1910, Defendant's Exhibit 5, did the Hartford Life Insurance Company pay a tax to the State of Missouri? A. Yes, sir; it did.

Q. In what amount and in what manner did it pay? A. It paid by check of the Company for $3,430.09.

Q. Where is that check? A. That check was used as an exhibit in this case during a prior deposition.

Q. It has been attached as an exhibit in this case? A. It has been attached.

Q. Have you a receipt for that payment? A. Yes, sir.

Q. Will you produce it? A. Yes, sir; I produce herewith the receipt.

Q. Will you attach it to your deposition as Exhibit 8?

> Plaintiff objects for the reason that under the laws of Missouri they had no right to levy this or assess tax against assessment company; objection overruled by the Court; plaintiff excepted at the time.

Receipt attached to this deposition is offered in evidence and marked "Defendant's Exhibit 8".

Mr. Morrow: I object to that for the reason it is not shown that any levy of assessment was made and for the reason that assessments cannot be proven in that way. And for the further reason they had no right under the law to assess this insurance assessment.

Objection overruled by the Court; plaintiff excepted at the time.

Said Exhibit 8 is as follows:

**DEFENDANT'S EXHIBIT 8.**

No. 265
(Seal)
Revenue Fund, $1715.04
County Foreign
Ins. Tax Fund, $1715.05

Total .....$3430.09

Treasurer's Office, State of Missouri.
City of Jefferson, Apr. 18, 1910.

Received of the Hartford Life Ins. Co. of Hartford, Conn., thirty-four hundred thirty 09/100 dollars, in full for taxes due the State (on premiums collected in Missouri during the year ending Dec. 31st, 1909), the same being assessed against said company by the Superintendent of the Insurance Department of the State, in compliance with the requirements of Sections 8043 and 8044 of the Revised Statutes of 1899.

In Testimony Whereof, I have hereunto set my hand and affixed my seal of office the day and year above.

James Cowgill, Treasurer.
J. H. Edwards, Chief Clerk.

(Signed in Duplicate.)
Filed Nov. 15, 1918.

J. M. Caldwell,
Clerk Circuit Court.

Q. Did the Hartford Life Insurance Company also make a report to the Insurance Department of Missouri for the year 1910? A. Yes, sir; it did.

Q. Have you a copy of that annual report? A. No, sir.

Q. Can you show by any book in your possession the amount of premiums and assessments collected in Missouri in 1910? A. Yes, sir; I have the book before me.

Q. What book do you refer to? A. The book is headed "State Record of Premiums, Dividends, etc., Hartford Life Insurance Company," and shows the amount collected from the State of Missouri for the year 1910.

Q. Is that the same book from which [illegible] was taken? A. Yes, sir.

Q. Will you read from this entry the amount of premiums collected in Missouri during 1910? A. The amount of premiums collected in the State of Missouri during the year 1910, as shown by this record is as follows: under the head of Safety Fund, Men, the amount is $112,861.87; Women, $4,092.69; Stipulated, $31.62; Stock Department, $54,534.87. Less Stock Department returned premiums amounting to $3,133.63, making a net amount under Stock Department of $51,401.24. The total of these items is $168,387.42.

Q. After the company had mailed its report to the Insurance Department of Missouri, its annual report for the year ending December 31, 1910, did it receive a letter from that department making a demand for taxes for that year? A. Yes, sir; it did. It received a letter dated March 29, 1911, from the Insurance Department of the State of Missouri.

Q. Will you read the letter.

Mr. Morrow: Are you going to offer the original or just hearsay evidence?

Mr. Haid: The copy is his.

Mr. Morrow: I object to that for the reason that it is not shown that it was signed by anybody's authority. And I object further it is not shown there ever was an assessment made, and they had no right to make an assessment of the tax on these premiums under the law.

The Court: I understand the objection to that.

Mr. Morrow: The letter is the best evidence, and it cannot be read into the deposition in this manner.

Mr. Haid: That is the one which I showed Mr. Aber a while ago.

The Court: The objection will be overruled. I mean as to whether they produce the original or not, but the question as to whether or not they had a right to make the levy, that is reserved.

Plaintiff excepted at the time.

Mr. Morrow: I don't want to get this secondary evidence of a letter that was actually attached to a deposition. Of course, if they can read that, it will show what it is and it won't make any difference.

The Court: Well, go ahead.

A. "Insurance Department, State of Missouri. Jefferson City, Mo., March 29th, 1911. Hartford Life Insurance Company, Hartford, Conn. Gentlemen: I hereby notify you that the amount of taxes due the State of Missouri from your company on premiums collected therein, in the year 1910, is $3,367.75, same being two per cent on $168,387.42 (as shown by schedule). Please remit to Hon. James Cowgill, State

Treasurer, Jefferson City, Mo., on or before May 1st, 1911, and he will receipt you therefor. Very respectfully, Frank Blake, Superintendent."

Q. Will you attach this to your deposition as Exhibit 9?

Copy of letter dated March 29, 1911, attached to this deposition is offered in evidence and marked "Defendant's Exhibit 9".

Mr. Morrow: I want to make the same objection to this offer.

The Court: Objection overruled.

Plaintiff excepted at the time.

Q. Did the Hartford Life Insurance Company pay that tax of $3,367.75? A. Yes, sir; it did.

Q. Do you know when? A. No, sir; not at the present moment, but I can find the date. I think, however, the original check was used as an exhibit in this same case.

Q. Have you the records of the Company, showing the payment of assessments, Men's Division of the Safety Fund Department? A. I don't understand the question.

Q. Have you in your charge the records showing the payment of the assessments in the Men's Division of the Safety Fund Department? A. Yes, sir.

Q. Have you examined, or, if not, will you examine these records and state whether or not any payments or assessments were made by or on behalf of Frank Barber, either on Call No. 126 due March 1, 1910, or at any time after March 1st, 1910? A. I have examined the records and find that there was no payment made by Frank Barber or for Frank Barber for

the call or assessment due March 1, 1910, on or before March 1st or March 5th, 1910, or at any time.

Q. Does your examination enable you to state whether any such payment was made down to June 5, 1910? A. Yes, sir; it does. There was no payment made on call or assessment due March 1, 1910, on or before June 1, 1910, nor on June 5, 1910, nor at any time.

Q. Was any amount paid or received by the company from the insured or anyone in his behalf between, say, December 31st, the date of the levy of the assessment, 1909, and June 5, 1910? A. No, sir; there was not.

Mr. Tuttle: You may inquire.

**Cross-Examination**, by Mr. Morrow.

Q. Mr. Benton, the first book, together with the pasters on page 67, about which you testified, is designated "Record of Mortality Calls, commencing December, 1901"? A. Yes, sir.

Q. This book is made up entirely of matters pasted into it? A. Yes, sir.

Q. Of course, there is an index to it, but outside of the index it is made up entirely of matters pasted into it? A. Yes, sir.

Q. The particular page, 67, to which you referred, has pasted upon it a letter dated January 5, 1910, from T. F. Lawrence, Secretary, to Mr. Mix? A. Yes, sir.

Q. Under that is also pasted upon the same page a list of the death claims for assessment No. 126, printed list of the death claims for assessment No. 126? A. Yes, sir.

Q. And also at the bottom is again pasted printed matter which purports to be form of assessment, call 126? A. Yes, sir.

Q. You don't know when these matters were pasted in this record? A. No, sir.

Q. You don't know who pasted them in this record? I am asking of your personal knowledge. A. They were pasted in by Mr. Mix.

Q. Did you see him? A. No, sir.

Q. Why did you say they were put in by him if you didn't see him, when I inquired if you knew of your own knowledge? A. Because Mr. Mix was the man who pasted those in. I answered in that way because I am sure Mr. Mix was the one who pasted those in.

Q. You will excuse me, but hereafter when I ask you of your own knowledge, if you do not know of your own knowledge, please do not say that you do, because it confuses this record. Now, you don't know when they were pasted in, yourself? A. No, sir; I do not.

Q. Now, you don't know when the letter was written, of your own personal knowledge? A. Why, yes.

Q. You never saw the letter written? A. No, sir.

Q. You never saw it signed? A. No, sir.

Q. You never really saw it until the matter of investigation and this claim came up? A. That is true.

Q. Now, the printed matter, consisting of the names of the persons who had died in this call No. 126, of course hadn't been gotten out on January 5, 1910? A. It had not been printed on January 5, 1910.

Q. That is what I mean; it hadn't been printed. And the notice of call, Quarterly Call No. 126, hadn't been printed on January 5, 1910? A. Probably not.

Q. This record, in which the matters I have just

inquired about are contained, is it absolutely essential to keep it in this office all the time in order to transact your company's business? A. It is essential that it remain in the custody of the company, for it is the only record we have of those orders, and, if anything should happen, if it were lost, it would seriously embarrass the company, as it is one of our important records.

Q. But it could be easily sent to your counsel in Missouri to be used in evidence on the 20th of November and returned to this office without inconveniencing the business at all of your company? A. I think it could, except for the fact that there is a great deal of danger in transfer. We have already lost packages which have been sent by express, and if anything should happen that it were lost it might seriously embarrass the company, as I have stated.

Mr. Morrow: Now, I desire to notify Judge Tuttle that the plaintiff will insist upon the original record, in this Exhibit 1 being produced at the trial for personal examination by the trier of fact, and to the fact that counsel is of the opinion that a certified copy will not portray the record in all its phases, as it is.

Q. Of course, you know nothing personally about who made the assessment for Call No. 126; you were not present; you don't know anything about it? A. Yes, sir; I know that Mr. George E. Keeney, president, and Mr. T. F. Lawrence, the secretary, levied assessment of Call No. 126.

Q. Did you understand my question? A. I think so.

Q. Now, Mr. Benton, were you present when it was made? A. No, sir.

Q. Why did you answer that question in that way? A. Because the information which I always received

as to the levy of a call was always received from Mr. Keeney, president, and from Mr. Lawrence, secretary.

Q. Mr. Benton, you are the vice-president of this company; you understand I am not trying to call for hearsay testimony, don't you? You are a man of that intelligence. Will you please state to me why you inject these matters in here when I do not call for them? A. I feel that I do know that those gentlemen levied this call.

Q. You were not present when anyone actually levied the assessment, No. 126? You can answer that question yes or no. A. No, sir; I was not.

Q. Now, you don't know when it was made, of your own personal knowledge? A. I don't know what day it was made.

Q. Now, what were your duties in 1909 and 1910 in connection with the defendant, the Hartford Life Insurance Company? A. I was at that time the cashier of the company, and among my duties were those of preparing the notices of the various calls, sending them to the insured, and receiving payments on those calls and entering them on our books.

Q. What did you personally do to them yourself? A. I supervised them.

Q. What do you mean by "supervised"? A. I had clerks under me who prepared those notices under my supervision.

Q. What do you mean—you told them to do that, just simply told them to do it? A. Yes, sir.

Q. Of course, as cashier of the company, you couldn't look to see whether it was all done or not? A. No, I couldn't see every notice that was made.

Q. You didn't pretend to take them and mail them yourself? A. No, sir.

Q. You don't know whether that was done, do you, personally? A. Yes, I know they were mailed.

Q. I ask you, personally? A. Can't I answer in this way? I didn't see every one of them mailed.

Q. Mr. Benton, I want you to answer in the way it is, you didn't mail any of those notices yourself? A. No, sir.

Q. Now there were quite a number of notices to be sent out in 1909 and 1910, weren't there? A. Yes, sir.

Q. About how many? A. I couldn't tell without looking it up.

Q. Well, were there many or few? A. Oh, there were a great many; ten, fifteen or twenty thousand.

Q. I suppose you had clerks in your employ whose duty it was to actually and physically take these letters enclosing these notices, put the postage upon them, and put them into the post office or the post office box in the City of Hartford? A. That is correct.

Q. And, of course, they were under your general supervision? A. Yes, sir.

Q. I notice that you have before you and have testified and offered as an exhibit, to be annexed to your deposition, insurance report of the State of Missouri for the year 1909, and you were asked to tell how that was made up, and you gave some testimony about how it was made up, didn't you? A. Yes, sir.

Q. Did you actually, personally, help make it up outside of furnishing some figures for someone else to make it up? A. I think not.

Q. Well, the document that you have before you, is that an office copy of the report for 1909? A. That is a copy furnished by the Insurance Department.

Q. I understand it is a certified copy. A. This is a certified copy of the Insurance Department of the State of Missouri.

Q. Don't you keep on file here in your office the original copies that are sent out to the Insurance Commissioner of Missouri? A. We do keep a copy of all those statements, but when the Legal Reserve business of this company was reinsured with the Missouri State Life Insurance Company, of St. Louis, those records were all sent to the office of the Missouri State Life Insurance Company.

Q. And for that reason they are not in Hartford now? A. For that reason they are not in the office at the present time.

Q. Now, you produced a certain record of the company, showing the payment of taxes to the State of Missouri for certain years; what years does that record cover? A. Do you mean the record contained in the book?

Q. Yes, the one you have referred to. A. Nineteen hundred nine, 1910, 1911 and 1912.

Q. Now, will you refer to your records and state for how many years prior to 1909 and 1910 did you collect from Frank Barber two per cent upon the amount of his assessments? A. I can find out from the registers of the company.

Q. I wish you would do that. A. A tax of two per cent, levied against certificate 128293, and collected by the company, as required by the law of Missouri, was continued from March 1st, 1890, to December 1st, 1909, and also levied on the call due March 1st, 1910, which was not collected. On certificate 174416 the tax was levied and collected from March 1st, 1894, to December 1st, 1909, and was levied on call due March 1st, 1910, which was not collected. This tax was paid

by or for Frank Barber, the insured, under those certificates to the company.

Q. The record book you offered, of the Hartford Life Insurance Company, pages 54 and 67, referring to minutes of the meetings of the directors of the company, is the minute book and contains the record and proceedings of the directors of the Hartford Life Insurance Company covering several years? A. Yes, sir.

Q. And include the years 1909 and 1910, and even up to the present time? A. Yes, sir.

Q. Would it seriously inconvenience the Hartford Life Insurance Company if its minute book were taken to Missouri, at the trial on November 20, 1918? A. Yes, sir; It would. That is one of the most important books of the company. It is the only record of the actions of the directors and the stockholders of the company between those years, and it is in constant use, and if it were taken away for any length of time it would seriously interfere with the proper conduct of the company's business; and if it were lost or injured in any way it might cause irreparable harm to the company.

Q. Were any notices of Call No. 127 sent out to Frank Barber? A. I would have to look at the register, but I am quite positive there was no such notice sent.

Q. Well, I wish you would look at the register and just answer that question yes or no. A. (After examining register.) No, sir; no notice was sent out to Frank Barber on call due June 1st, 1910.

Q. That would be Call No. 127, following No. 126? A. Yes, sir.

Q. Did you always collect in advance these two per cent taxes? A. In advance?

Q. Yes; what I mean is, you collected during the year for what you would have to pay at the end of the year, whether that be a calendar year or a fiscal year. You didn't wait until the next year and advance those thousands of dollars of taxes and have them reimbursed from the assessment holder? A. To the best of my knowledge, as soon as we knew that a state required payment of taxes on the assessment of policies, we then began to add the amount of tax to the assessment.

Q. Well, now, in this instance it was a flat two per cent tax and you required it to be paid in advance before you paid it to the state? A. Yes, sir.

Q. And in this particular instance of Frank Barber, these taxes, whatever they were, were collected by you in advance of the time you paid them to the State of Missouri? A. Yes, sir.

Q. So that the tax that you collected in March, 1910, or would have collected if Frank Barber had paid it, would not have been actually paid out by you until later? A. Not until the first of the following year.

Judge Tuttle (Q.): This book from which Exhibit 1 is taken, was, I suppose, turned over to you in its present form when you became custodian of the records? A. Yes, sir.

Judge Tuttle (Q.): Are you able to say whether it has been kept by or under the supervision of Mr. Mix? A. Yes, sir; it was.

Collins W. Benton.

Subscribed and sworn to before me on the 12th day of November, at the place, and within the hours first aforesaid.

Nellie W. Annis,
Notary Public.

(Seal)

Defendant offers in evidence the deposition of Roy C. Mix, the same being as follows:

**ROY C. MIX,**

sworn, examined by Judge Tuttle, testified as follows:

Q. Will you state your full name, age, residence, and your occupation? A. Royal C. Mix; age, 83; 153 Oakland Terrace; insurance clerk.

Q. By what insurance company are you employed? A. Hartford Life Insurance Company.

Q. How many years have you been with the Hartford Life Insurance Company continuously? A. Thirty-seven.

Q. And what was your position in the years 1909 and 1910? A. I had charge of the registers in which the accounts were kept with the membership.

Q. Did you at that time have charge of this book entitled "Record of Mortality Calls, commencing September 1, 1901"? A. Yes.

Q. Calling your attention to page 67 of this record, and to a letter addressed to you by Mr. T. F. Lawrence, Secretary, did you ever see that before? A. Yes, I recognize that as one of the orders from the secretary.

Q. Will you state whether that was the customary way in which the officers of the company communicated to you the quarterly mortality or assessment calls? A. It was.

Q. Did you paste or cause to be pasted that notice, which is dated January 5, 1910, and a copy of which has been annexed to this deposition as Exhibit 1, in this book? A. All of the notices of that character I either pasted in or caused to be pasted in.

Q. And whether or not that particular one was pasted in there at the time or substantially at the time it was received by you? A. Substantially; yes, sir.

Q. How much time would elapse between the receipt by you of a letter of this type, signed by the secretary, and these printed lists and notices which are pasted on the same page under the letter? A. I don't understand the question.

Q. How much time would elapse between the receipt of this letter and the receipt of this printed list? A. That I don't know; I am not conversant with the printed matter at all; I don't know when they would be printed.

Q. Can you give any estimate as to the length of time that would elapse after the receipt of the letter from the secretary before the printed matter would be gotten out? A. Well, a very short time. It might have been printed at the same time that this came in, but probably not under a few days, perhaps. It might be two or three days, it might be a week, it might be more or less.

Q. But would the printed matter get to you at some time before the next mortality call? A. Oh, yes, the printed matter would be in the office. This would not come with that order. When the printed matter came we got one of these lists and pasted it in at the same time we pasted that in. The work was all done at the same time; that was my part of the work.

Q. Will you examine that page 67 and tell us whether that is in the same condition it has been since about January, 1910? A. No question about that.

**Cross-Examination,** by Mr. Morrow.

Q. The first matter that was pasted on this page 67 is the list of death claims, printed list of death claims, for the quarterly call No. 126? A. Yes.

Q. Then thereafter there was pasted on, the edge of which laps over the bottom of this list, the printed form of the notice of call No. 126? A. That was pasted on first.

Q. You mean by that that the list of the death claims was pasted first? A. Yes, it had to be.

Q. Thereafter there was pasted on, with the edge lapping over the bottom of the list of death claims, form of call No. 126? A. Thereafter? It might have been five minutes after.

Q. And on the outside and on top of all of them is the letter of January 5, 1910, purporting to be signed by T. F. Lawrence, Secretary? A. Yes, sir.

Q. Now, of course, this is a large book with blank leaves in which you have pasted matters of that kind from time to time? A. There is where we kept the women's, here is where we kept the men's; the women's on one page and the men's on the other.

Q. Of your own personal knowledge you don't know when any of these matters were actually received by you? A. I couldn't give any dates.

Q. You have now no personal information on the matter; you simply see it on the book, and your duty was to paste it on the book? A. I know it was put there by me or by my orders.

Q. I mean you have no personal recollection now, when you look at it you have no personal recollection about it? A. It is always as plain to me as when the sun rises.

Q. Do you personally remember this? A. Not that particular one.

Q. You don't remember whether you did it, or somebody else? A. I couldn't tell whether I did it, or my assistant.

Q. Who was your assistant? A. At that time—could you tell, Mr. Benton? There were changes made in the help.

Royal C. Mix.

Subscribed and sworn to before me on the 12th day of November, at the place and within the hours first aforesaid.

Nellie W. Annis,
Notary Public.

I, Nellie W. Annis, Notary Public within and for the Town and County of Hartford, State of Connecticut, do certify that, pursuant to the annexed commission and notice, came before me at Hartford, in the county and state last aforesaid, Collins W. Benton and Royal C. Mix, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined and their examination reduced to writing on the 9th day of November, 1918, and subscribed by them on the 12th day of November in my presence, between the hours and at the place in that behalf first aforesaid, and that their said depositions are now herewith returned.

I further certify that said Collins W. Benton and Royal C. Mix are residents of the County of Hartford, in the State of Connecticut.

Given at Hartford, in the County of Hartford and

State of Connecticut, this 12th day of November, 1918.

(Seal)

Nellie W. Annis,
Notary Public.

It is hereby certified that Nellie W. Annis, on November 9th, 1918, was and now is a notary public within and for the State of Connecticut, duly commissioned and acting as such, and that full faith and credit are due to her acts as such.

In Testimony Whereof, I, George A. Conant, Clerk of the Superior Court, County of Hartford, State of Connecticut, have hereunto subscribed my name and affixed the seal of office this 12th day of November, 1918.

(Seal)

George A. Conant,
Clerk.

Mr. Morrow: I insist now, as the announcement was made this morning, that this original record appears in court of this mortality call of 126. Unless it is produced in evidence I move to strike out all of the testimony your Honor has permitted, over objections, for the reason it is not the best evidence, and secondary evidence, and that the jury ought to have a right to look and to inspect these records.

The Court: Have you got these records?

Mr. Jones: We have the original record, showing the ratio made as reported by the officers. We will produce it in a minute, but I don't think that objection or motion of Mr. Morrow's is quite fair for the reason that the evidence shows that it usually takes thirty days to calculate this cost and tell the ratio.

The defendant offers in evidence book of records of

the defendant company, entitled "Record of Mortality Calls", commencing December 31, same being marked "Exhibit No. 20."

Mr. Haid: On page 67 of which appears a letter addressed to Mr. Mix, same being as follows:

A copy of the letter here referred to appears in this abstract as Defendant's Exhibit 1 to the deposition of Collins W. Benton.

Defendant offers in evidence a certified copy issued by the Superintendent of Insurance of the State of Missouri, of the certificate of authority of the Hartford Life Insurance Company, of Hartford, Connecticut, to do business in this State for the period expiring March 1st, 1910. Exhibit No. 21, same being as follows:

**DEFENDANT'S EXHIBIT No. 21.**

Certificate of Authority.

Renewable Annually March 1st.

Insurance Department of the State of Missouri.

It is hereby certified that the Hartford Life Insurance Company of Hartford, Conn., has complied with the requirements of the insurance laws of this State, and is hereby authorized, subject to the provisions thereof, to do the business of life insurance in the State of Missouri until the first day of March, one thousand nine hundred and ten.

In witness whereof, I, John Kennish, Superintendent of the Insurance Department of the State of Missouri, have hereunto set my hand and affixed my seal of

office, in duplicate, at City of Jefferson, this first day of March, 1909.

John Kennish,
Superintendent.

(L. S.)
W. J. F. Maring.

State of Missouri.

Insurance Department.

I, Alfred L. Harty, Superintendent of the Insurance Department of the State of Missouri, do hereby certify that the above and foregoing is a true and correct copy of the original certificate of authority for the year ending March 1st, 1910, of the Hartford Life Insurance Company of Hartford, Conn., which said original is now on file in this department.

In testimony whereof, I have hereunto set my hand and caused to be hereto affixed the seal of said department, at my office in the City of Jefferson, this 26th day of July, 1918.

A. L. Harty, Superintendent.
(Seal) By E. G. McGee, Chief Clerk.

Defendant offers in evidence a similar certificate for authority to do business in this State for the period expiring March 1st, 1911, Exhibit No. 22, the same being as follows:

**DEFENDANT'S EXHIBIT No. 22.**

Certificate of Authority.

Renewable Annually March 1st.

Insurance Department of the State of Missouri.
It is hereby certified that the Hartford Life In-

surance Company of Hartford, Conn., has complied with the requirements of the insurance laws of this State, and is hereby authorized, subject to the provisions thereof, to do the business of life insurance in the State of Missouri until the first day of March, one thousand nine hundred and eleven.

In witness whereof, I, Frank Blake, Superintendent of the Insurance Department of the State of Missouri, have hereunto set my hand and affixed my seal of office, in duplicate, at City of Jefferson, this first day of March, 1910.

Frank Blake,
(L. S.) Superintendent.

State of Missouri.

Insurance Department.

I, Alfred L. Harty, Superintendent of the Insurance Department of the State of Missouri, do hereby certify that the above and foregoing is a true and correct copy of the original certificate of authority for the year ending March 1st, 1911, of the Hartford Life Insurance Company of Hartford, Conn., which said original is now on file in this department.

In testimony whereof, I have hereunto set my hand and caused to be hereto affixed the seal of said department, at my office in the City of Jefferson, this 26th day of July, 1918.

A. L. Harty, Superintendent.
(Seal) By E. G. McGee, Chief Clerk.

Defendant here offers and reads in evidence opinion of the Supreme Court of Missouri in the case of

Northwest Masonic Aid Association v. Wadell, 138 Mo. Report, commencing at page 628.

**Defendant here rests its case.**

**The plaintiff here rests her case.**

**The foregoing is all the evidence in this case.**

At the conclusion of the entire evidence in this case the defendant interposed a demurrer to the evidence of the plaintiff, the same being as follows:

A.

"The Court instructs the jury that under the law and the evidence in this case your verdict must be for the defendant."

Which said demurrer was by the Court overruled and instruction refused; to which action of the Court the defendant then and there excepted at the time.

Thereupon the Court, at the instance of the plaintiff, gave to the jury the following instructions; to the giving of which the defendant objected and then and there excepted to the action of the Court:

**PLAINTIFF'S GIVEN INSTRUCTIONS.**

No. —.

The Court instructs the jury that under the law and the evidence in this case your verdict should be for the plaintiff in the sum of $2,000.00, the amount of the policy sued upon herein, with interest thereon at the rate of 6 per cent per annum from the 8th day of October, 1910, to this date, and you should add the several amounts together in your verdict so as to make an aggregate sum.

And the Court further instructs the jury that if

you find and believe from the evidence that the defendant, before the institution of this suit, refused to pay plaintiff the amount of the policy sued upon, and shall further find and believe from all the facts and circumstances shown by the evidence that its refusal to pay was vexatious, that is, without reasonable cause, then you may also allow her in addition to the amount of the policy sued upon and interest thereon, a sum not exceeding 10 per cent of the amount of the policy sued upon, together with a reasonable attorney's fee, said attorney's fee not to exceed the sum of $750.00, and should return a verdict for the aggregate sum.

The Court of its own motion gave the jury the following instruction:

**COURT'S INSTRUCTION.**

Three-fourths of the jury, that is, nine or more, but less than the full jury, may agree upon a verdict. If agreed to by less than the full jury, the verdict should be signed by those agreeing thereto, but, if agreed to by the full jury it should be signed solely by your foreman in his capacity as such.

The defendant requested the Court to give to the jury the following instructions, numbered I to XXVIII, inclusive, which said instructions I to XXVIII were by the Court refused; to which action of the Court in refusing each of said instructions the defendant then and there excepted at the time:

## DEFENDANT'S REFUSED INSTRUCTIONS.

I.

The Court instructs the jury that the proof in this case as to the condition of the Mortuary Fund at the time of the levy of Mortuary or Quarterly Call No. 126 does not authorize the jury to find that said Mortuary or Quarterly Call was illegal or void because of the amount shown to have been in the Mortuary Fund, and the jury are instructed that they cannot find that said assessment was illegal because of the amount shown to have been in the Mortuary Fund at the time Mortuary or Quarterly Call No. 126 was levied.

II.

The Court instructs the jury that the purpose of the Mortuary Fund, as provided by the certificate of insurance sued on in this case, is for the payment of indemnities matured by deaths of members, and no part of that fund can be diverted by defendant in payment or discharge of the dues under the certificate of membership sued on herein.

III.

The jury are instructed that they are not authorized to find that the assessment of Quarterly Call No. 126 was illegal or void because of the amount in the Safety Fund as shown by the proof in this case.

IV.

The Court instructs the jury that if you believe and find from the evidence that on or about Jan-

uary 29, 1910, defendant began the calculation of an assessment or call, known as Call No. 126, notice of which was sent out by the defendant to the insured, and in which said notice the defendant demanded of the insured the sum of thirteen dollars and nineteen cents ($13.19) under the certificate sued on herein; and if you further find that on January 29, 1910, there was three hundred twenty-two thousand three hundred seventy-eight dollars and forty-eight cents ($322,378.48) of death losses in the Men's Division of the Safety Fund Department not previously assessed for, and that said call was based on three hundred twenty-two thousand three hundred seventy-eight dollars and forty-eight cents ($322,378.48) of death losses which had not been previously assessed for on January 29, 1910; that to determine the amount of said call No. 126 defendant calculated and ascertained the aggregate amount of a call or assessment of one rate (according to the rates shown in the table of graduated mortality ratios attached to the contract sued on) levied against all the members of said division whose certificates were in force at said date at their then attained ages; that the amount of an assessment of one rate thus ascertained was found to be and was seventy-eight thousand seven hundred five dollars and forty-two cents ($78,705.42); that the defendant deducted therefrom the sum of one thousand nine hundred forty-four dollars and two cents ($1,944.02); that said sum so deducted was in the judgment of the defendant company a reasonable and proper allowance for the probable discontinuance of membership by death or lapse; that the net amount of an assessment of one rate (with said reduction) was seventy-six thousand seven hun-

dred sixty-one dollars and forty cents ($76,761.40); that the amount of the death losses aforesaid, three hundred twenty-two thousand three hundred seventy-eight dollars and forty-eight cents ($322,378.48) was then divided by seventy-six thousand seven hundred sixty-one dollars and forty cents ($76,761.40) (the net amount of an assessment of one rate as aforesaid); that the quotient thus obtained was 4.20, and the defendant multiplied two-thirds of the rate of two dollars and thirty-one cents ($2.31), which was the rate at the insured's then age, fifty-one (51), as shown by the table endorsed on the contract, or one dollar and fifty-four cents ($1.54), by said quotient of 4.20 for each one thousand dollars of insurance granted by the contract sued on, which produced thirteen dollars and four cents ($13.04) as the proportion of said call payable under said certificate for mortuary purposes on said Call No. 126; that the amount payable for mortuary purposes by all members in said division on said call was ascertained by a like calculation; that to said amount of thirteen dollars and four cents ($13.04) the defendant added the sum of fifteen cents ($0.15) for taxes, payable to the State of Missouri, making the total amount levied against the insured under said certificate for mortuary purposes and taxes thirteen dollars and nineteen cents ($13.19); then the Court instructs you that said call was levied as required by the contract sued on and was valid; and if the amount thereof was not paid or tendered to the defendant at any time prior to the death of said Frank Barber, your verdict in this case must be for the defendant.

V.

The Court instructs the jury that under the contract sued on, in addition to the amount payable by the insured as an assessment for mortuary purposes and taxes, it became and was the duty of the insured to pay to the defendant as dues the sum of six dollars ($6.00) per annum; that by the terms of said contract said dues were payable in advance either annually or in *pro rata* installments for a period of less than a year; that it indisputably appears from the evidence that the dues had customarily been paid under this certificate quarterly in advance on or before the first day of March, June, September and November in each year; and if you believe and find from the evidence that on March 1, 1910, the dues payable under said contract for the ensuing quarter, to wit, one dollar and fifty cents ($1.50), had not been paid, then, in order to keep said certificate in force, the insured was required by the terms thereof to pay or tender said amount on or before March 5, 1910; and if you believe and find from the evidence that said amount was not paid or tendered by the insured at any time prior to his death, then the plaintiff cannot recover in this case, and your verdict should be in favor of the defendant.

VI.

The Court instructs the jury that on January 29, 1910, the defendant levied against the insured, Frank Barber, under the certificate in suit an assessment known and designated as Call 126, by which the defendant demanded the sum of thirteen dollars and

nineteen cents ($13.19), notice of which call or assessment was sent to the said Frank Barber.

The undisputed evidence is that at the time the calculation of said assessment or call was begun there was three hundred twenty-two thousand, three hundred seventy-eight dollars and forty-eight cents ($322,378.48) of death losses in the Men's Division of the Safety Fund Department which had not been previously assessed for; that to determine the amount of said Call No. 126 defendant calculated and ascertained the aggregate amount of a call or assessment of one rate (according to the rate shown in the table of graduated ratios attached to the certificate sued on) levied against all the members of said division whose certificates were in force on said date at their attained ages; that the amount of an assessment of one rate thus ascertained was found to be and was seventy-eight thousand, seven hundred five dollars and forty-two cents ($78,705.42); that the defendant deducted therefrom the sum of one thousand, nine hundred forty-four dollars and two cents ($1,944.02); that said sum so deducted was in the judgment of the defendant company a reasonable and proper allowance for the probable discontinuance of membership by death or lapse; that the net amount of an assessment of one rate (with said reduction) was seventy-six thousand, seven hundred sixty-one dollars and forty cents ($76,761.40); that the amount of the death losses aforesaid, three hundred twenty-two thousand, three hundred seventy-eight dollars and forty-eight cents ($322,378.48), was then divided by seventy-six thousand, seven hundred sixty-one dollars and forty cents ($76,761.40) (the net amount of an assessment of one rate as aforesaid); that the quotient thus ob-

tained was 4.20; and the defendant multiplied two-thirds of the rate, two dollars and thirty-one cents ($2.31), which was the rate for the insured's then age, fifty-one (51), on the table endorsed on the certificate, or one dollar and fifty-four cents ($1.54), by said quotient of 4.20 for each one thousand dollars of insurance granted by the certificate sued on, which produced thirteen dollars and four cents ($13.04) as the proportion of said call payable under said certificate for mortuary purposes on said Call No. 126; that the amount payable for mortuary purposes by all members in said division on said call was ascertained by a like calculation; that to said amount of thirteen dollars and four cents ($13.04) defendant added the sum of fifteen cents ($.15) for taxes payable to the State of Missouri, making the total amount levied against the insured under said certificate for mortuary purposes and taxes thirteen dollars and nineteen cents ($13.19).

Therefore the Court instructs you that said call was levied as required by the certificate sued on and was valid, and that as the amount thereof was not paid or tendered to the defendant at any time prior to the death of the said Frank Barber, your verdict in this case must be for the defendant.

VII.

The Court instructs the jury that it indisputably appears from the proof in this case that the amount of death losses in the Men's Division of the Safety Fund Department of the defendant Company not previously assessed for on December 31, 1909, when the defendant began the calculation of Mortuary

Call No. 126, aggregated about four hundred sixty-three thousand five hundred dollars ($463,500.00); that it also indisputably appears from the uncontradicted evidence that the amount in the Mortuary Fund at that time was seventy-four thousand nine hundred thirty-eight dollars and thirty-two cents ($74,938.32); that it was entirely reasonable and proper under the terms of the contract in suit and the conditions as shown by the proof to have existed when Call No. 126 was levied, for the defendant to replenish or increase said Mortuary Fund to the extent which it sought to do by Call No. 126, in order that the Mortuary Fund might be maintained in a sum adequate for the payment of indemnities matured by deaths in said department, and the Court, therefore, instructs you that the sum shown to have been in the Mortuary Fund when Call No. 126 was levied did not render said call illegal or void.

VIII.

The Court instructs the jury that under the terms of the contract sued upon and as construed by the courts of Connecticut, it was and is the privilege of the defendant Company to maintain in the Mortuary Fund at all times a sum not to exceed the average of one quarterly assessment for the year preceding Mortuary Call No. 126; that the evidence shows that the average of one quarterly assessment for the year 1909 was in excess of three hundred thousand dollars ($300,000.00), and inasmuch as it indisputably appears that the amount in the Mortuary Fund on December 31, 1909, when the defendant began the calculation of Call No. 126, was

only seventy-four thousand nine hundred thirty-eight dollars and thirty-two cents ($74,938.32), the Court instructs the jury that they cannot find the Mortuary Call No. 126 was illegal or void because of the amount of money then in the Mortuary Fund.

IX.

The Court instructs the jury that under the evidence and under the terms of the contract in suit it was the privilege and duty of the defendant Company to levy calls or assessments upon the policy in suit and upon the other policyholders in the department in which said policy was issued, for the purpose of maintaining and replenishing the Mortuary Fund for the payment therefrom of indemnity of insurance matured by deaths of members in the Men's Division of the Safety Fund Department of the defendant Company, and it is wholly immaterial in this case whether the assessment levied was based upon death claims which had already been paid from that fund; and even though the jury should find that some of the death claims upon which Mortuary or Quarterly Call No. 126 was based had been paid prior to the time that said call was issued, yet this fact does not render said mortuary call illegal or void; and the jury cannot find the said mortuary or quarterly call was for this reason illegal or void.

X.

The Court instructs the jury that under the undisputed evidence in this case the amount held by the defendant in the Stipulated Premium Fund and referred to in the evidence as the reserve or surplus on stipulated premium policies is a fund held

and maintained pursuant to the provisions of contracts in a department other than that in which the policy sued on was issued, and that the existence of said stipulated premium fund or the amount therein did not render Mortuary Call No. 126 illegal or void; and the jury are instructed that they cannot find that said Mortuary Call No. 126 was illegal or void because of the existence of said stipulated premium fund.

XI.

The Court instructs the jury that the undisputed and uncontradicted evidence shows that the board of directors of the defendant delegated and authorized the officers of the defendant to make and levy the assessment in question, and, therefore, the Court instructs you that you are not authorized to find that said assessment was illegal or void because it was not actually made and levied by the board of directors of the defendant as such.

XII.

The Court instructs the jury that it appears from the undisputed evidence herein that all assessments or mortality calls prior to assessment or call 126 levied against the said Frank Barber under the certificate in suit were made and levied by and under the direction of either the president or vice-president and secretary of the defendant company and therefore, the Court instructs you that such course of action or practice on the part of the officers of the defendant amounted in law to a delegation by the Board of Directors to said officers of the defendant of the right

and power to make and levy assessment or call 126, and the jury cannot find that said assessment or call 126 levied against the said Frank Barber under the certificate or policy in suit was illegal or void because it was made and levied by the officers of the defendant company and not by its Board of Directors.

XIII.

The Court instructs the jury that if you believe and find from the evidence herein that for a long period prior to January, 1910, all assessments or mortuary calls under certificates issued in the Safety Fund Department of the defendant company were made, ordered and levied by or under the direction of the officers of the defendant company, then the Court instructs you that this amounted to a delegation by the Board of Directors of the defendant to the officers of the defendant company of the right and power to make and levy said assessment or call No. 126, and the jury, therefore, cannot find under such circumstances that said assessment or Mortality Call No. 126 levied against the said Frank Barber under the certificate in suit was illegal and void because it was made, ordered and levied by and under the direction of the officers of the defendant company and not by the Board of Directors as such.

XIV.

The Court instructs the jury that it is specifically provided by the certificate or policy in suit that if the laws of any state shall require a tax to be paid by the defendant on account of mortality calls or assessments payable by the holders of such certificates, such

mortality calls or assessments to be levied by the defendant under such certificates shall be computed so as to cover and include such tax; that it is specifically provided by Section 8043, R. S. Mo. 1899, in force at and prior to the levy of said assessment or call 126 against the said Frank Barber under the policy or certificate in suit, that every insurance company or association not organized under the laws of the State of Missouri shall pay annually a tax upon the premiums received for insurance of life in the said State of Missouri; that the defendant company in compliance and in accordance with the laws of the State of Missouri, filed with the Insurance Department of the State of Missouri annual reports for the years ending December 31, 1909, and December 31, 1910; that said reports so filed by the defendant Company with the Insurance Department contained the amount of mortality calls or assessments collected by the defendant company on certificates in its Safety Fund Department held by citizens of this State, for the years ending December 31, 1909, and December 31, 1910, respectively; that after the filing of said reports as aforesaid, the Insurance Department of the State of Missouri computed and ascertained from said reports the amount of the tax payable by the defendant company on premiums or assessments collected by it from holders of certificates in the Safety Fund Department residing in the State of Missouri; that it appears from the undisputed evidence that in computing said tax the said Insurance Department included and assessed the defendant upon all assessments or mortality calls collected by it under certificates held by persons in the State of Missouri and demanded of the defendant the payment of tax computed and based upon all of

the assessments paid to defendant under the certificates held by persons in the State of Missouri, which said tax, so computed by the Insurance Department as aforesaid, was paid by the defendant; and under the circumstances, the Court instructs you that you cannot find from the evidence that the assessment or call 126 levied against the insured under the certificate sued on herein was illegal and void because it included two per cent of the amount of said assessment as a tax to the State of Missouri on account of such assessment.

XV.

The Court instructs the jury that they cannot find in this case that the assessment or Mortality Call No. 126 levied against the insured, Frank Barber, was illegal or void because of the fact that two per cent of the amount of said assessment was demanded of the said Frank Barber by defendant as a tax payable to the State of Missouri on account of such assessment.

XVI.

The Court instructs the jury that the defendant herein was merely acting as trustee for the said Frank Barber and all other certificate holders in the Safety Fund Department of the defendant company in the levy and calculation of assessments under the certificate in suit and all other certificates issued in the Safety Fund Department of the defendant company; that in the exercise of the powers and duties imposed upon the defendant as such trustee the defendant is only obligated to exercise that care and

prudence which an ordinarily prudent person would exercise under the same or similar circumstances, and that the defendant as such trustee is not liable to the holders of such certificates for mere errors of judgment in the computation and levy of such assessments; that it is specifically provided in the certificate or policy in suit that if the laws of any state shall require a tax to be paid by the defendant on the mortality calls or assessments payable under such certificate, such mortality calls or assessments shall be determined so as to cover and include the amount of such tax; that it is provided by Section 8043, R. S. Mo. 1899, in force at and prior to the time of the levy of the assessment or Call 126 under the policy in suit, that every insurance company or association not organized under the laws of the State of Missouri shall pay annually a tax upon the premiums received for insurance of life in the State of Missouri; that the action of the defendant in including in said assessment or Mortality Call 126, two per cent of the amount thereof as a tax due the State of Missouri was a mere error of judgment on the part of the defendant and the Court therefore instructs you that you cannot find that said assessment or Mortality Call 126 levied against the said Frank Barber was illegal or void because it was computed so as to include two per cent of the amount of said assessment as a tax due the State of Missouri on said assessment.

## XVII.

The Court instructs the jury that it was adjudged by the Supreme Court of the United States on the former appeal of this cause that assessment or Call

126 levied by the defendant against the said Frank Barber under the certificate or policy sued on herein, was valid and legal, and that the plaintiff is now estopped by reason of such finding and holding by the Supreme Court of the United States in this cause from asserting that said assessment or call is illegal, excessive or void.

## XVIII.

The Court instructs the jury that the plaintiff is estopped by the decision and judgment of the Supreme Court of the United States on the former appeal of this case from asserting that assessment or Call No. 126, levied against the said Frank Barber by the defendant under the certificate sued on herein, was illegal or void because of the fact that two per cent of the amount of said assessment was demanded of the said Frank Barber by the defendant as a tax payable to the State of Missouri on account of such assessment.

## XIX.

The Court instructs the jury that it is provided in and by the terms of the certificate or policy sued on herein, that if the insured under said policy or certificate shall fail to receive a notice of any call or assessment on or before the date that such assessment or call became due, said certificate shall not lapse, if an amount equal to the amount of the last said assessment or mortality call be transmitted to and received by the defendant company's secretary on or before the fifth day of the calendar month next following the month in which the aforesaid failure of

notice shall have occurred. The Court further instructs you that the call or assessment subsequent to assessment or Call 126, became due under the terms of the certificate or policy sued on herein on the first day of June, 1910, and if the jury believe and find from the evidence that the defendant company did not receive from the insured, on or prior to June 5th, 1910, or from anyone on his behalf, the sum of thirteen dollars and nine cents ($13.09), which the evidence shows was the amount of the last assessment or call paid by the insured on said policy or certificate, then your verdict must be for the defendant.

XX.

The Court instructs the jury that notwithstanding you may believe and find from the evidence that the assessment or Call 126, due March 1, 1910, under the certificate sued on herein, was illegal, excessive or void, yet the Court instructs you that in order to keep said policy or certificate in force and effect it became and was the duty of the insured, by virtue of the terms of said certificate or policy to offer or tender to defendant, so as to reach the defendant on or before the 5th day of June, 1910, the amount of the last assessment or mortality call paid by the said Frank Barber under said certificate, which the evidence shows was thirteen dollars and nine cents ($13.09). If, therefore, the jury believes and finds from the evidence that the defendant did not receive from the said Frank Barber, or from anyone on his behalf, the sum of thirteen dollars and nine cents ($13.09) on or before the 5th day

of June, 1910, then the Court instructs you that your verdict must be for the defendant.

XXI.

The Court instructs the jury that the action of the Court in allowing and permitting the introduction of evidence offered by plaintiff, over the defendant's objection and exception, for the purpose of showing that the assessment or Call 126 levied by the defendant against the said Frank Barber under the policy or certificate in suit was illegal and void because it was not actually made and levied by the Board of Directors of the defendant, fails to give full faith and credit to the charter of the defendant, contrary to and in violation of Article IV, Section 1, of the Constitution of the United States, for the reason that said charter does not require that assessments under the certificates issued in the Men's Division of the Safety Fund Department shall be made and levied by the Board of Directors of the defendant Company and for the further reason that the undisputed evidence in this case shows that the Board of Directors of the defendant delegated to the officers of the defendant the right and power to make and levy the assessment in question.

XXII.

The Court instructs the jury that it is provided by the contract sued upon that the certificate of the Secretary that notice has been sent pursuant to the terms of the policy, supported by the affidavit of the person whose duty it was to mail such notice, shall be conclusive proof of the mailing of such no-

tices, and therefore the Court instructs you that it is conclusively established by the certificate of the Secretary and the affidavit of C. W. Benton, introduced in evidence in this case, that notice of Mortuary Call No. 126 was given to the insured, Frank Barber, and you will so find.

XXIII.

The Court instructs the jury that the plaintiff is not entitled to recover against the defendant anything by way of damages and attorneys' fees.

XXIV.

The Court instructs the jury that there is no evidence in this case that the refusal of the defendant to pay the plaintiff the amount claimed by her under the policy in suit is or was vexatious, and that the plaintiff is not entitled to recover damages or attorneys' fees against the defendant.

XXV.

The Court instructs the jury that the undisputed and uncontradicted evidence in this case establishes that the refusal of the defendant to pay to the plaintiff the amount claimed by plaintiff under the policy in suit was made in good faith and was not vexatious and that the plaintiff is not entitled to recover damages or attorneys' fees against the defendant.

XXVI.

The Court instructs the jury that Section 7068, Revised Statutes of Missouri for 1909, and the Act of March 30, 1911, Laws of Missouri for 1911, p. 282, in

amendment thereof, if held or construed as authorizing a recovery by plaintiff of damages and attorneys' fees against the defendant herein, are unconstitutional and void and deprive the defendant of its property without due process of law and deny to defendant the equal protection of the law, contrary to and in violation of Section 1 of the 14th Amendment to the Constitution of the United States, for the reason that there is no evidence in this case that the refusal of the defendant to pay the plaintiff the amount claimed by her under the policy in suit is or was vexatious.

XXVII.

The Court instructs the jury that there is no evidence in this case that the defendant waived the payment when due, of assessment or call 126 levied by the defendant against the said Frank Barber under the certificate sued on herein, and the jury cannot find that said certificate or policy was in force at the time of the insured's death, on the ground that there was a waiver by the defendant of the payment of said assessment or call when due.

XXVIII.

The Court instructs the jury that when said assessment or call 126, levied by the defendant against the said Frank Barber under the certificate or policy in suit, was not paid on or before March 1, 1910, the due date of said call or assessment, the defendant extended the time for the payment of said assessment or call to March 20th, 1910, and agreed to accept the payment of said assessment or call from the said

Frank Barber at any time on or prior to March 20th, 1910. The Court further instructs you that it is conceded by the parties to this cause that the said Frank Barber died on June 5th, 1910, and the undisputed and uncontradicted evidence in this case shows that the longest period intervening between the due date and the date of payment of any prior assessment levied against the said Frank Barber under said certificate or policy was 24 days, and as the undisputed and uncontradicted evidence shows that there was no tender by or payment of assessment or call 126 by the said Frank Barber at any time prior to his death on June 5th, 1910, the Court instructs you that you cannot find there was a waiver by the defendant of the payment of assessment or call 126 by a past course of conduct on the part of the defendant in accepting payment of previous assessments or calls after their due date under the policy or certificate sued on herein.

Thereafter, on the said 21st day of November, 1918, the jury returned into open court the following verdict:

**VERDICT.**

We, the jury, find the issues in favor of the plaintiff and assess her damages at the sum of $2,974.30, together with the sum of $200.00 for vexatious delay, and the sum of $750.00 for attorneys' fees, making in the aggregate the sum of $3,924.30.

H. H. Hudson,
Foreman.

Thereafter, on the 21st day of November, 1918, and within four days after the rendition of the above verdict, the defendant filed herein and presented to the

Court its motion for new trial, which said motion for new trial (omitting caption) is as follows:

## MOTION FOR NEW TRIAL.

Now comes the defendant, Hartford Life Insurance Company, in the above-entitled cause, and moves the Court to set aside the verdict rendered against it herein and to grant it a new trial for the following reasons, to wit:

1. Because the Court erred in refusing to sustain defendant's motion to strike out parts of plaintiff's reply to defendant's amended answer as amended.

2. Because the Court, in refusing to sustain defendant's motion to strike out the sixth paragraph of plaintiff's reply to defendant's amended answer as amended, denied full faith and credit to the judgment and decision of the Supreme Court of the United States rendered on the former appeal of this cause, contrary to and in violation of Section 1 of Article IV of the Constitution of the United States.

3. Because the Court erred in refusing defendant's motion made at the time this cause was called for trial that no further proceedings or trial be had in this cause for the reason that all the issues involved in said cause had been decided adversely to plaintiff by a decision and judgment of the Supreme Court of the United States on the former appeal of this cause.

4. Because the Court erred in not sustaining the defendant's motion to strike out the sixth paragraph of the plaintiff's reply to defendant's amended answer as amended, for the reason that the matter set up in the sixth paragraph of the plaintiff's said reply appeared in the proceedings upon the first trial of this cause, as well as in the record upon the appeal of said

cause, and was not urged by the plaintiff as invalidating assessment No. 126, and the plaintiff thereby waived any claim or right upon the matter set up in the sixth paragraph of the plaintiff's said reply and is now estopped from asserting that the inclusion of the fifteen cents (15c) to cover the two per cent (2%) tax required to be paid under the statutes of Missouri renders assessment No. 126 illegal and void.

5. Because the verdict is against the law.

6. Because the verdict is against the evidence.

7. Because the verdict is against the law and the evidence and the law under the evidence.

8. Because the verdict is against the weight of the evidence.

9. Because the Court erred in giving the instruction to the jury directing a verdict in favor of the plaintiff in this cause for the amount of the policy sued on, with interest.

10. Because the Court erred in giving to the jury the instruction requested by the plaintiff.

11. Because the Court erred in allowing the plaintiff to introduce illegal, incompetent, immaterial, irrelevant and prejudicial evidence, over the objections and exceptions of the defendant thereto.

12. Because the verdict of the jury is excessive.

13. Because the Court erred in refusing to give and read to the jury the instructions in the nature of a demurrer to the evidence offered by the defendant at the close of the case.

14. Because the action of the Court in refusing to give to the jury the instruction in the nature of a demurrer to the evidence offered by the defendant at the close of the whole case denied full faith and credit to the decree of the Connecticut Court in the

case of Dresser *et al.* v. Hartford Life Insurance Company *et al.*, contrary to and in violation of Section 1, Article IV of the Constitution of the United States.

15. Because the Court, in refusing to give and read to the jury the instruction in the nature of a demurrer to the evidence offered by the defendant at the close of the whole case, denied full faith and credit to the judgment and decree of the Supreme Court of the United States rendered in this cause on the former appeal, contrary to and in violation of Section 1, Article IV of the Constitution of the United States.

16. Because the Court erred in refusing to give and read to the jury instruction number one requested by the defendant.

17. Because the Court erred in refusing to give and read to the jury instruction number two requested by the defendant.

18. Because the Court erred in refusing to give and read to the jury instruction number three requested by the defendant.

19. Because the Court erred in refusing to give and read to the jury instruction number four requested by the defendant.

20. Because the Court erred in refusing to give and read to the jury instruction number five requested by the defendant.

21. Because the Court erred in refusing to give and read to the jury instruction number six requested by the defendant.

22. Because the Court erred in refusing to give and read to the jury instruction number seven requested by the defendant.

23. Because the Court erred in refusing to give and read to the jury instruction number eight requested by the defendant.

24. Because the Court erred in refusing to give and read to the jury instruction number nine requested by the defendant.

25. Because the Court erred in refusing to give and read to the jury instruction number ten requested by the defendant.

26. Because the Court erred in refusing to give and read to the jury instruction number eleven requested by the defendant.

27. Because the Court erred in refusing to give and read to the jury instruction number twelve requested by the defendant.

28. Because the Court erred in refusing to give and read to the jury instruction number thirteen requested by the defendant.

29. Because the Court erred in refusing to give and read to the jury instruction number fourteen requested by the defendant.

30. Because the Court erred in refusing to give and read to the jury instruction number fifteen requested by the defendant.

31. Because the Court erred in refusing to give and read to the jury instruction number sixteen requested by the defendant.

32. Because the Court erred in refusing to give and read to the jury instruction number seventeen requested by the defendant.

33. Because the Court erred in refusing to give and read to the jury instruction number eighteen requested by the defendant.

34. Because the Court erred in refusing to give and

read to the jury instruction number nineteen requested by the defendant.

35 Because the Court erred in refusing to give and read to the jury instruction number twenty requested by the defendant.

36. Because the Court erred in refusing to give and read to the jury instruction number twenty-one requested by the defendant.

37. Because the Court erred in refusing to give and read to the jury instruction number twenty-two requested by the defendant.

38. Because the Court erred in refusing to give and read to the jury instruction number twenty-three requested by the defendant.

39. Because the Court erred in refusing to give and read to the jury instruction number twenty-four requested by the defendant.

40. Because the Court erred in refusing to give and read to the jury instruction number twenty-five requested by the defendant.

41. Because the Court erred in refusing to give and read to the jury instruction number twenty-six requested by the defendant.

42. Because the Court erred in refusing to give and read to the jury instruction number twenty-seven requested by the defendant.

43. Because the Court erred in refusing to give and read to the jury instruction number twenty-eight requested by the defendant.

44. Because the Court erred in refusing to permit the introduction of competent, relevant and material evidence offered by the defendant.

45 Because the Court erred in refusing to give full faith and credit to the judgment of the Connecticut

Court in the case of Dresser *et al.* v. Hartford Life Insurance Company *et al.*, contrary to and in violation of Section 1, Article IV of the Constitution of the United States.

46. Because the Court erred in refusing to give full faith and credit to the decision and judgment of the Supreme Court of the United States rendered on the former appeal of this cause.

47. Because the Court erred in refusing to hold and in refusing to instruct the jury, at the request of the defendant, that Section 7068, R. S. Mo. 1909, and the Act of March 30, 1911, Laws of Missouri for 1911, page 282, in amendment thereof, if held or construed as authorizing a recovery by plaintiff of damages and attorneys' fees under the evidence in this case, are unconstitutional and void and deprive the defendant of its property without due process of law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

48. Because the imposition of damages and attorneys' fees against the defendant herein by the jury and the judgment herein against the defendant, which includes damages and attorneys' fees, deprive defendant of its property without due process of the law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

49. Because the Court, by the instruction given to the jury and by the verdict and judgment pursuant thereto, has failed to give full faith and credit to the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser *et al.* against Hartford Life Insurance Company *et al.*, and that thereby said action of the Court and the verdict and judg-

ment rendered herein are violative of Section 1 of Article IV of the Constitution of the United States.

Jones, Hocker, Sullivan & Angert,
W. E. Suddath,
Attorneys for Defendant.

Thereafter, on the 21st day of November, 1918, defendant's motion for new trial was by the Court overruled; to which action of the Court in overruling said motion for new trial the defendant then and there excepted at the time.

Thereafter, on the said 21st day of November, 1918, the same being during the October, 1918, Term of this court, defendant filed herein and presented to the Court its affidavit for an appeal, the same being as follows (omitting caption):

## AFFIDAVIT FOR APPEAL.

Now comes the defendant in the above-entitled cause and prays the Court to grant it an appeal in the above-entitled cause to the Supreme Court of the State of Missouri.

Jones, Hocker, Sullivan & Angert,
Geo. F. Haid,
Jas. C. Jones, Jr., and
W. E. Suddath,
Attorneys for Defendant.

State of Missouri,
County of Johnson, } ss

W. E. Suddath, being first duly sworn, upon his oath states that he is one of the attorneys and, as such, agent for the defendant in the above-entitled cause, and makes this affidavit for and on behalf of

the defendant; that the appeal prayed for by the defendant in the above-entitled cause is not made for vexation or delay, but because defendant and this affiant considers defendant aggrieved by the judgment and decision of the Court.

W. E. Suddath,

Subscribed and sworn to before me this 21st day of November, 1918.

(Seal)

J. M. Caldwell,
Clerk of Circuit Court of Johnson County, Missouri.

Which said affidavit for appeal was by the Court duly granted and allowed to the Supreme Court of the State of Missouri, and defendant given leave to file bill of exceptions on or before February 15th, 1919.

And now comes the defendant and presents to the Court this its bill of exceptions, and prays that the same may be signed and made a part of the record herein, which is accordingly done this the 13th day of February, 1919.

C. A. Calvird,
*Special Judge of the Circuit Court within and for Johnson County, Missouri.*

O. K.: February 11, 1919.
Chas. E. Morrow,
*Attorney for Plaintiff.*

And thereafter, on the 29th day of March, 1919, there was filed in the office of the Clerk of said Supreme Court the Respondent's Additional Abstract of Record in said cause, which said Additional Abstract is in the words and figures following, towit:

IN THE

# SUPREME COURT OF MISSOURI,

DIVISION NO. 1.

APRIL TERM, 1919.

| | |
|---|---|
| ROSA BARBER, *Respondent,* vs. HARTFORD LIFE INSURANCE COMPANY, *Appellant.* | NO. 21,314. |

## RESPONDENT'S ADDITIONAL ABSTRACT OF RECORD.

### RECORD PROPER.

After this cause was remanded by this Court, for a new trial, the record proper shows that the defendant, by leave of Court, on the 20th day of November, 1918, amended its answer herein by interlineation, by inserting therein the allegations commencing with the words, "That in and by said policy of insurance," at the top of page 11 of appellant's

abstract of record, and ending with the words, "Payment of dues for the quarter ending February 1, 1910," on page 12 of appellant's abstract of record. The appellant's abstract of record shows, on page 11 thereof, that this amendment was inserted by leave of Court, but it does not give the date of said amendment.

After the defendant had so amended its amended answer, the plaintiff, on the 20th day of November, 1918, filed reply to said amended answer, as amended, which is set out at pages 23, 24, 25 and 26 of appellant's abstract of record.

## BILL OF EXCEPTIONS.

Plaintiff's Exhibit No. 1, being the policy sued upon herein and attached to and filed with the plaintiff's petition and offered in evidence at the trial, and called for in the bill of exceptions, is not correctly set out in appellant's abstract of record, that portion thereof commencing with the first part of said policy on page 32 of appellant's abstract of record, and, ending with the signatures of the president and secretary of said policy, on page 35 of appellant's abstract of record, is incorrect and is as follows:

"No. 174416 The Age 35.

Hartford Life and Annuity

Insurance Company

Hartford, Connecticut.

Policy Amount

Safety Fund Department. $2,000.00.

In Consideration of the representations, agreements, and warranties made in the application herefor, and of the Admission Fee paid; and of Three Dollars per annum on each $1,000 of the Indemnity herein provided for, for expense Dues, to be paid as hereinafter conditioned, and of the fur-

ther payment of all Mortality Calls proportioned to the said Indemnity, levied against the herein named member to form a Mortuary Fund for the payment of all Indemnity matured by deaths of members, and to create a Safety Fund as hereinafter described, which mortality calls, to be levied upon all members in the department wherein this Certificate is issued whose Certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios given hereon, and as further determined by their respective ages and the aggregate indemnity at the dates of such deaths, with due allowance for discontinuance of membership (one-third of the proceeds of such mortality calls to be applied towards said Safety Fund until the sum of Ten Dollars on each $1,000 Indemnity aforesaid shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon), does hereby issue this Certificate of Membership in its Safety Fund Department to Frank Barber (herein called the member) of St. Louis, County of City of St. Louis, State of Missouri, with the following agreements:

That ninety days from the receipt by the President or Secretary of said Company of satisfactory proofs, in accordance with forms furnished upon notice of death and with full information as to the manner and cause, of the death of the herein named member while this Certificate is in force, all the conditions hereof having been conformed to by the member, upon presentation and surrender of this Certificate properly receipted, there shall be due and payable, out of the aforesaid Mortuary Fund and not otherwise, the Indemnity of Two Thousand Dollars (less the balance unpaid, if any, of the stipulated contribution to said Safety Fund, with fifty per cent added, together with the unpaid installments of annual expense dues and any mortality or other charge against the member payment of which is not matured), to his wife, Rosa Barber, if living, otherwise to his legal representatives. All such payments to be made at

the Home Office of said Company in lawful money of the United States.

That said company will deposit said sum of ten dollars, when received, with the trustee, named in a contract made with it (of which a copy is printed hereon), as a safety fund in trust for the uses and purposes expressed in said contract; and shall make a semiannual division of the net interest received therefrom by it, *pro rata* among all the holders of certificates in force in said department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said fund, by applying the same to the payment of their future dues and assessments; and that, whenever said fund shall amount to one million dollars, all subsequent receipts therefor shall be divided by the said company in like manner as the interest. Said company further agrees that if at any time it shall fail by reason of insufficient membership, or shall neglect, if justly and legally due, to pay the maximum indemnity provided for by the terms of any certificate issued in said department, and such certificate shall be presented for payment to said trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said trustee to at once convert said safety fund into money and divide the same (less the reasonable charges and expenses for the management and control of said fund) among the holders of certificates then in force in said department, or their legal representatives, in the proportion which the amount of each of their certificates shall bear to the amount of the whole number of such certificates in force; and that in such event it shall file with said trustee a correct list, under oath, of the names, residences and amounts of the certificates of all members entitled to participate in such division. The evidence referred to above to be either certification of said Insurance Company's president or secretary that a claim is justly and legally due and that

payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from its date.

And said company further agrees that so long as any certificate of membership in its safety fund department shall remain in force, said fund shall be in nowise chargeable or liable for any use or purpose except as above mentioned.

And said company further agrees that the aforesaid mortuary fund shall be in nowise chargeable or liable for any use or purposes other than for the settlement of death claims, except as herein mentioned. **This certificate is issued by the company and accepted by the member upon the express conditions and agreements given elsewhere hereon, and assented to as forming part of this contract.**

In Witness Whereof, The said Hartford Life and Annuity Insurance Company have, by their president and secretary, signed and delivered this contract, at Hartford, Conn., this 4th day of September, one thousand eight hundred and ninety-three.

(Seal) R. B. Parker, President.

W. A. Cowles, Asst. Secretary."

Provision 2. On the back of said policy, commencing with the words and figures "2. Of payments", on page 36 of appellant's abstract of record, and ending with the words "who are authorized to receive them" on page 27 of appellant's abstract of record, is not correctly set out therein, but is as follows:

"2. Of Payments.—The member agrees to pay said company, for expenses, dues of three dollars per annum on each $1,000 indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force; or by *pro rata* installments of the same, in advance, for periods of less than a year: And also agrees to pay said company, within thirty

days from day on which notices bear date, all mortality calls determined as within set forth; the proceeds of which, less such charges as are herein prescribed and ten cents on each call for cost of collection, and less also one-third of each mortality call until the sum of ten dollars on each $1,000 indemnity has been paid and applied to the within described safety fund, shall form the mortuary fund; but if the laws of any country, state, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax; and the proceeds of such mortality calls shall be charged with the member's proportionate share of fees actually paid by the company for medical examinations made in the first year of the membership hereby granted. All of which payments are to be made directly to the home office of said company, and not to agents, who are unauthorized to receive them."

ROBERT KELLEY,
NICK M. BRADLEY,
M. D. ABER,
CHARLES E. MORROW,
*Attorneys for Respondent.*

Filed Mar. 29, 1919. J. D. Allen, Clerk Supreme Court.

And thereafter, on the 9th day of April, 1919, there was filed in the office of the Clerk of said Supreme Court Appellant's Supplemental Abstract in said cause, which said supplemental abstract is in the words and figures following, to wit:

IN THE

# Supreme Court of the State of Missouri,

DIVISION NO. 1.

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APRIL TERM, 1919.

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ROSA BARBER,
*Plaintiff-Respondent,*

vs.

HARTFORD LIFE INSURANCE COMPANY,
*Defendant-Appellant,*

No. 21,314.

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## APPELLANT'S SUPPLEMENTAL ABSTRACT.

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The additional abstract furnished by plaintiff-respondent calls our attention to an error in the original abstract prepared by appellant.

The error is this: Plaintiff's Exhibit 1 is not correctly set forth in the original abstract. This was occasioned by furnishing the printer with a copy of Plaintiff's Exhibit 1 supposed at the time to be a correct copy, but which it develops was an incorrect copy

because of the inadvertent use of a different form of certificate.

To obviate any possible misunderstanding we have, in the following pages, printed in full from the original of Plaintiff's Exhibit No. 1, marking each page substituted page for the like page of the original abstract where the incorrect copy appears, and we respectfully ask leave of the Court to file this supplemental transcript and that the same may be taken in lieu of and in substitution of the pages of the original abstract referred to.

JONES, HOCKER, SULLIVAN & ANGERT,
GEORGE F. HAID,
JAMES C. JONES, JR.,
*Attorneys for Defendant-Appellant.*

# PLAINTIFF'S TESTIMONY.

Plaintiff offers in evidence policy sued upon, No. 174416, dated September 4th, 1893, which is attached to and filed with the petition in this case, issued by the Hartford Life Insurance Company to Frank Barber, and the amount is payable to his wife, Rosa Barber, if living, and otherwise to his legal representatives; same being marked "Exhibit No. 1", and is as follows:

**PLAINTIFF'S EXHIBIT 1.**

No. 174416 Age 35

The Hartford Life and Annuity Insurance Company.
Hartford, Connecticut.

Policy. Amount.
Safety Fund Department. $2000.

In Consideration of the representations, agreements, and warranties made in the application herefor, and of the Admission Fee paid; and of Three Dollars per annum on each $1,000 of the Indemnity herein provided for, for expense Dues, to be paid as hereinafter conditioned, and of the further payment of all Mortality Calls proportioned to the said Indemnity, levied against the herein named member to form a Mortuary Fund for the payment of all indemnity matured by deaths of members, and to create a Safety Fund as hereinafter described, which mortality calls, to be levied upon all the members in the department wherein this Certificate is issued whose Certificates are in force at the dates of such deaths, shall be made according to the table of graduated mortality ratios

given hereon, and as further determined by their respective ages and the aggregate Indemnity at the dates of such deaths, with due allowance for discontinuance of membership, (one-third of the proceeds of such mortality calls to be applied towards said Safety Fund until the sum of Ten Dollars on each $1,000 Indemnity aforesaid shall have been thus applied, when the basis of all subsequent mortality calls shall be two-thirds only of the table given hereon), does hereby issue this Certificate of Membership in its Safety Fund Department to Frank Barber (herein called the member) of St. Louis County of City of St. Louis State of Missouri with the following agreements:—

That ninety days from the receipt by the President or Secretary of said Company of satisfactory proofs, in accordance with forms furnished upon notice of death and with full information as to the manner and cause, of the death of the herein named member while this Certificate is in force, all the conditions hereof having been conformed to by the member, upon presentation and surrender of this Certificate properly receipted, there shall be due and payable, out of the aforesaid Mortuary Fund and not otherwise, the Indemnity of Two Thousand Dollars (less the balance unpaid, if any, of the stipulated contribution to said Safety Fund, with fifty per cent. added, together with the unpaid installments of annual expense dues and any mortality or other charge against the member payment of which is not matured,) to his wife Rosa Barber if living, otherwise to his legal representatives. All such payments to be made at the Home Office of said Company in lawful money of the United States.

That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a

contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall make a semi-annual division of the net interest received therefrom by it, *pro rata* among all the holders of Certificates in force in said Department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to One Million Dollars, all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time it shall fail by reason of insufficient membership, or, shall neglect, if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department, and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificate in force; and that in such event it shall file with said Trustee a correct list, under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certifica-

(Substituted Page 35)

tion of said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from its date.

And said Company further agrees that so long as any Certificate of Membership in its Safety Fund Department shall remain in force, said Fund shall be in nowise chargeable or liable for any use or purpose except as above mentioned.

And said Company further agrees that the aforesaid Mortuary Fund shall be in nowise chargeable or liable for any use or purposes other than for the settlement of Death Claims, except as herein mentioned.

This Certificate is issued by the Company and accepted by the member upon the express conditions and agreements given elsewhere hereon, and assented to as forming part of this contract.

In Witness Whereof, The said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and delivered this contract, at Hartford, Conn., this 4th day of September one thousand eight hundred and ninety-three.

R. R. Parker, President.

(Seal) W. A. Cowles, Act. Secretary.

Agents of the Company are not authorized to make any indorsements on or to vary the terms of this Certificate.

(Ed. Aug., '88.) (Fund payable with M. C.)

Condition No. 2 "Of Payments," will be so far modified by notices as to allow FOUR days' grace;

increased to FOURTEEN days if resident West of Rocky Mountains.

Annexed is a copy of the Application upon which this Contract is based. Particular attention is invited to it, as this Certificate is issued on the faith of the answers and agreements therein made, which if not correct render it invalid.

**This Certificate is Issued by the Company and Accepted by the Member upon the Following Express Conditions and Agreements:**

1. **Applications Made Part of Contract.**—The application on the faith of which this Certificate issues, together with each and all the several answers, statements, agreements and verification therein contained, is hereby referred to and made a part of this contract; and the exact literal truth of every representation contained in such application as also in each application for reinstatement of this contract shall be a condition precedent to the validity of this contract and of each reinstatement thereof granted in consideration of such representations.

2. **Of Payments.**—The member agrees to pay to said Company, for expenses, dues of Three Dollars per annum on each $1,000 Indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this Certificate shall remain in force; or by *pro rata* installments of the same, in advance, for periods of less than a year: And also agrees to pay said Company, within thirty days from day on which notices bear date, all Mortality Calls determined as within set forth; the proceeds of which, less such charges as are herein pre-

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scribed and ten cents on each Call for cost of collection and less also one-third of each Mortality Call until the sum of Ten Dollars on each $1,000 Indemnity has been paid and applied to the within described Safety Fund, shall form the Mortuary Fund: But if the laws of any Country, State, County or Municipality shall require a tax to be paid by said Company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax; and the proceeds of such mortality calls shall be charged with the member's proportionate share of fees actually paid by the Company for medical examinations made in the first year of the membership hereby granted. All of which payments are to be made directly to the Home Office of said Company, and not to agents, who are unauthorized to receive them.

3. **Conditions of Acceptance.**—The member further agrees and accepts this Certificate upon the express condition that if either the Annual Dues, Mortality Calls, or Safety Fund Deposit, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certificate was in force, either from said Company or the Trustee of the Safety Fund: And that failure to make the stipulated payments shall absolutely terminate the member's liability therefor: And that if any final division from said Safety Fund, as hereinbefore provided, shall be made by the Trustee thereof on account of this Certificate; then, and in all such cases, all liability of said Company and of its Safety Fund, on account of this Certificate, shall cease.

4. **Incontestability of Contract.**—Five years from the date of full payment hereon towards the Safety Fund, or five years from the date of any reinstatement hereof after such full payment, this contract shall be absolutely incontestable, provided that no default in respect of time and amount of any of the stipulated payments hereon shall have occurred, (excluding all waiver whatsoever of promptness in payment unless evidenced by extension of time by the Company's Secretary in writing:) Provided also that no understatement of age was made in application herefor; except that in case of such understatement the indemnity recoverable shall nevertheless be such a proportional part only of the whole indemnity named herein as the whole amount of mortality calls paid hereon shall bear to the whole amount of same that should have been paid at the true age; and except further that if the true age at date of application was beyond the age of sixty years then there shall be recoverable only the annual dues and mortality calls paid hereon: And provided further that the occupations prohibited herein shall not be followed without the Secretary's written consent.

5. **Giving Notice.**—The quarter days for the payment of Mortality Calls shall be the 1st day of March, June, September and December in each year, notices of which will be dated and mailed thirty days before such dates. No Mortality Call to fall due on the first quarter day following the date of this contract can be made. A notice directed to the address of the member, or other person designated by the member, appearing at the time on the Company's books, shall be a sufficient notice of any required payment, and a certificate of the Secretary, supported by affidavit of

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the person whose duty it was to perform the service, of such addressing and of mailing of notice in post-office at Hartford shall be taken and admitted as conclusive evidence of such addressing and mailing and be admitted as conclusive proof of due notice to each and every person interested herein: But if the person addressed as aforesaid shall fail to receive a notice of Mortality Call before the 15th day of February May, August and November in each year, nevertheless this contract shall not discontinue if an amount equal to the amount of the last paid Mortality Call be transmitted to and received by the Company's Secretary on or before the Fifth day of the Calendar month next following the month in which the aforesaid failure of notice shall have occurred. (If failure of notice of first mortality call occurs, then compute for such purpose an amount, for each $1,000 Indemnity, equal to twice the ratio set in the table hereon against the member's age.) Notices given while any payment that has fallen due hereon shall be unpaid, are to be understood only as notices to reinstate membership and shall not be held to extend maturity of such unpaid payments nor as waiving proof that the member is alive and in good health, certificate of which shall be tendered with all applications for reinstatement; nor shall payments therefor be effective to reinstate membership unless they, together with such health certificate to the Company's satisfaction, shall be received at the Company's Home Office before the member's death.

6. **Change of Residence or Address.**—In case of change of residence, post-office address, occupation, or name of the member, or other person designated to be notified by Company, the member or such person shall

at once give notice thereof in writing to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

7. **Prohibitions.**—If the member shall be personally engaged in blasting, submarine operations, mining underground, manufacturing poisonous or explosive chemicals, retailing intoxicating beverages, as engineer or fireman on railroad locomotive, or in "braking" or "coupling" on, and "making-up" of, railroad trains, trading or living among savage tribes or nations, or shall be engaged in military service (except in time of peace), or in naval or any marine service, without, in each of these cases, having first obtained the written consent of said Company's Secretary, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair health, or to produce delirium tremens, or to cause death; or shall die by self-destruction—whether sane or insane—or while intoxicated, or from effects of drunkenness, or as the result of a duel, or in consequence of keeping or visiting unlawful or disreputable resorts, or while violating or attempting to violate the laws of any Nation, State, Province or Municipality; or if there has been any concealment, misrepresentation or false statement or statement not true made in the application on which this Certificate issues; or if the conditions of this Certificate shall not be in all respects observed and performed by the member to whom this Certificate issues; then, and in all such cases, this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid hereon.

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8. **Travel and Residence.**—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers and sailing vessels, and to visit or reside, in addition to the residence named in the application herefor, in any portion of the world where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

9. **Limitation of Action.**—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim upon or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said member it shall be deemed a waiver, on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid hereon. And it is further expressly agreed, in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from the death of said member, that the person or persons so commencing suit or proceeding shall pay to said Company the sum of two hundred dollars as its reasonable attorney fees and damages, in addition to the taxable costs and allowances in the case.

10. **Debts and Liens.**—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary herein, or their assigns, to said Company at the time

of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness, and the right to deduct and withhold the amount of any such account or indebtedness in payment thereof. But nothing herein contained shall be held to constitute a waiver of forfeiture if any of the hereinbefore stipulated payments shall not be paid when due in the manner set forth in the conditions of this Certificate.

11. **Assignments.**—This Certificate shall not be assigned or transferred, unless with the concurrent action of the member and beneficiary or beneficiaries, assignee or assignees hereunder; nor unless with the consent in writing of said Company's Secretary and immediately filing with him a copy of all such assignments or transfers; nor, unless a claim hereunder, made by an assignee, be subject to proof of interest; nor, unless the amount recoverable hereunder by any such assignee (except such assignee shall bear to the member the relationship of wife, child, parent, brother or sister,) be limited to the value of the interest proven. The Company shall not be responsible for validity of assignments.

12. **Powers of Agents.**—Agents of the Company cannot alter or waive any of the conditions of this Certificate, nor issue permits of any kind, and they are not authorized to make any indorsements hereon, nor to receive or receipt for money on behalf of this Company other than for Admission Fees, for the receipt of which alone the delivery of this Certificate is acknowledgment. It is further expressly agreed that if the member shall entrust money to an agent for payment

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of Mortality Calls, Dues or Safety Fund Deposits the Company shall not be held responsible therefor until all moneys thus entrusted shall have been actually received in the Home Office of the Company before the last day fixed for payment of such moneys shall have passed.

13. **Waiver of Conditions.**—Alteration of the conditions of this Certificate or waiver of forfeiture thereof shall not be effective unless made in writing, signed by the Company's President or Secretary.

14. This contract shall not go into effect until delivered to the member or designated beneficiary within the lifetime and good health of the member, nor, if delivered while any part of the payments required by its terms shall be past due and unpaid at the Company's Home Office.

15. The stipulation in respect of self-destruction contained in the Seventh Condition hereof is hereby so far modified that if the member shall die by self-destruction, (whether sane or insane,) the Indemnity under this policy shall be an amount equal to the amount of the payments made thereon; but if positive proofs of insanity be furnished the Company, then the maximum indemnity stipulated by this policy shall nevertheless be paid as provided.

**Trustees' Contract.**

This Agreement, made and entered into this Thirty-first day of December, A. D. 1879, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Con-

necticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; Witnesseth:

Whereas, The party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words; to wit:

"That said Company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, *pro rata* among all the holders of Certificates in force in said department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to one million dollars, all subsequent receipts therefor shall be divided by the said Company in like manner as the interest.

"Said Company further agrees that if at any time, after said Fund shall have amounted to three hundred thousand dollars, or after five years from January 1, 1880, if that amount shall not have been attained be-

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fore that date, it shall fail by reason of insufficient membership, or, shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said department, and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund,) among all the holders of Certificates then in force in said department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list, under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from its date.

"And said Company further agrees that so long as any Certificate of membership in its Safety Fund Department shall remain in force, said Fund shall be in nowise chargeable or liable for any use or purpose except as above mentioned."

Now, Therefore, the party of the first part, in consideration of the covenants and agreements hereinafter

contained on the part of the party of the second part and in accordance with its agreement with its Certificate holders as hereinbefore recited, does hereby appoint the party of the second part Trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said Trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every Certificate of membership issued by it in the aforesaid department until said Fund shall amount to one million dollars, to be by said Trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expenses of said trust, to be paid over to the party of the first part, as hereinafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements: And when said Trustee shall pay the income, as above, to the party of the first part, or, shall make any other payments from said Fund, as required by the terms hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

And the party of the second part, for itself and its successors, in consideration of such deposits and of a reasonable compensation for its services and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors and with each of the holders of the aforesaid Certificates that it will receive, hold, manage and dispose of all said deposits made with it by said Insurance Company, principal and income, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders; and shall at all reasonable

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times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of an interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, addresses, numbers and amounts of Certificates of all persons thus entitled.

That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the Safety Fund of the said Insurance Company, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1879, or until such time thereafter as said Fund shall amount to three hundred thousand dollars, par value, of the bonds purchased for said Fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall amount in such bonds, at their par value, to one million dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund

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into money and divide the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained: Said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper division thereof as agreed with its Certificate holders.

All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect of the party of the first part; and all payments required herein to be made to the Certificate holders by the party of the second part to be made at the office of said Trustee or of the successor in said trust.

The necessary expenses connected with the management of said Fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned bonds, together with the cost of the stationery and postage used in replying to requests for information of the condition of said Fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expense to be included in and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby-mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with its Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership is-

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sued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to such successor.

In Witness Whereof, the party of the first part has affixed hereto the corporate seal of said Insurance Company and caused these presents to be signed by its President and Secretary.

And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands.

Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

Hartford Life and Annuity Ins. Co.,

(Seal) By E. H. Crosby, President, and
Stephen Ball, Secretary.

Security Company,

(Seal) By Robert E. Day, President, and
William L. Matson, Treasurer.

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**Table**

Of Graduated Mortality Ratios for every $1,000 of Death Loss, on each $1,000 of a total Indemnity in force of $1,000,000.

| Age. | Ratio. | Age. | Ratio. | Age. | Ratio. | Age. | Ratio. |
|---|---|---|---|---|---|---|---|
| 15 to 21 | $0.98 | 33 | $1.37 | 44 | $1.80 | 55 | $2.88 |
| 22 | 1.01 | 34 | 1.41 | 45 | 1.83 | 56 | 3.05 |
| 23 | 1.04 | 35 | 1.46 | 46 | 1.88 | 57 | 3.23 |
| 24 | 1.07 | 36 | 1.50 | 47 | 1.95 | 58 | 3.48 |
| 25 | 1.10 | 37 | 1.55 | 48 | 2.03 | 59 | 3.75 |
| 26 | 1.13 | 38 | 1.59 | 49 | 2.10 | 60 | 4.02 |
| 27 | 1.16 | 39 | 1.64 | 50 | 2.21 | 61 | 4.29 |
| 28 | 1.19 | 40 | 1.68 | 51 | 2.31 | 62 | 4.62 |
| 29 | 1.22 | 41 | 1.71 | 52 | 2.45 | 63 | 4.95 |
| 30 | 1.25 | 42 | 1.74 | 53 | 2.58 | 64 | 5.48 |
| 31 | 1.28 | 43 | 1.77 | 54 | 2.72 | 65 | 6.00 |
| 32 | 1.32 | | | | | | |

These ratios decrease in proportion as the total indemnity in force increases above $1,000,000 in amount, and are calculated so as to cover the stipulated cost of collection, and Safety Fund Deposit.

Case No. 4619
Filed Jun 17, 1911
W. H. Henshaw,
Clerk Circuit Court.

No. A. C. F.
No. 1 C. F.

This Company has no Agents authorized to receive money on Mortality Calls, Dues, or Safety Fund.

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Policy No. 174416

Hartford Life and Annuity Insurance Company
of Hartford, Connecticut

Certificate of Membership.

Safety Fund Department.

Amount, .....$2,000

Name, Frank Barber
Agent, Max Zener

Read carefully all the Conditions of this Certificate.

No person should be a party to a contract without knowing all its conditions.

After an Agent has delivered this Certificate, and collected the Admission Fee, no other payment connected with the indemnity under this Certificate must be made to the agent without the production of a receipt signed by the Company's Secretary.

Always give Number of this Policy in writing or remitting to Home Office.

Condition 2 "Of Payments" is modified to make
First Expense Dues become payable 1893 1st Oct. 1.00
(To be in Home Office within 4 days thereafter.)
First Installment of Deposit payable 1893 1st Dec. 5.00
Quarterly Calls payable March, June, September, and December 1st, of each year.

Annexed is a copy of the Application upon which this Contract is based.

Plaintiff offers in evidence a letter from T. F. Lawrence, secretary of the company, to Morrow & Kelley, dated July 8th, 1910, together with the stipulation that this letter is signed by T. F. Lawrence, secretary of the Hartford Life Insurance Company,

And thereafter, on the 12th day of April, 1919, there was filed in the office of the Clerk of said Supreme Court the Appellant's Additional Abstract of Record in said cause, which said additional abstract is in the words and figures following, to wit:

IN THE

# SUPREME COURT OF MISSOURI.

APRIL TERM, 1919.

ROSA BARBER,
*Plaintiff-Respondent,*

vs.

HARTFORD LIFE INSURANCE COMPANY,
*Defendant-Appellant.*

No. 21,314.

Appeal from the Circuit Court of Johnson County.
Hon. C. A. Calvird, Special Judge.

## APPELLANT'S ADDITIONAL ABSTRACT OF RECORD.

Respondent, in her brief, has referred to an item in the annual report filed by the defendant company with the Insurance Department of the State of Missouri for the year ending December 31, 1909, which was admitted in evidence at the trial over the objection of the defendant, as indicated at page 54 of appellant's abstract. Although we are of the opinion that this report is wholly immaterial to the issues

of this case, yet, in view of the respondent's present contention, and the fact that only portions of said report were read into the record, we now set out the page of the report from which such items were read, being the assets reported by the company, as well as that page of the report showing its liabilities, surplus and other funds.

# PLAINTIFF'S EXHIBIT 6.

## ANNUAL STATEMENT OF THE HARTFORD LIFE INSURANCE COMPANY.

### IV.—LEDGER ASSETS.

| | | | |
|---|---|---|---|
| 1. | Book value of real estate, per Schedule A | | $ 218,731.00 |
| 2. | Mortgage loans on real estate, per Schedule B, first liens, $1,709,369.00; other than first liens, none | | 1,709,369.00 |
| 3. | Loans secured by pledge of bonds, stocks or other collateral, per Schedule C | | 10,000.00 |
| 4. | Loans made to policy-holders on this company's policies assigned as collateral | | 314,542.06 |
| 5. | Premium notes on policies in force, of which none is for first year's premiums | | 42,281.49 |
| 6. | Book value of bonds, $542,677.15; and stocks, $168,888.08; per Schedule D | | 711,565.23 |
| 7. | Cash in company's office | $ 3,653.85 | |
| 8. | Deposits in trust companies and banks, not on interest | 23,893.68 | |
| 9. | Deposits in trust companies and banks, on interest | 284,493.82 | 312,041.35 |
| 10. | Bills receivable, $22,556.91; agents' balances (debit, $11,987.66; credit, $134.87); net, $11,852.79 | | 34,409.70 |
| 11. | Safety funds in Security Company of Hartford | | 1,166,354.29 |
| 12. | Total Ledger Assets, as per balance on page 3 | | $4,523,294.12 |

### NON-LEDGER ASSETS.

| | | | |
|---|---|---|---|
| 13. | Interest due, $485.92, and accrued, $40,748.61, on mortgages, per Schedule B | $ 41,234.53 | |
| 14. | Interest due, $4,000.00, and accrued, $4,308.05, on bonds, per Schedule D, Part 1 | 8,308.05 | |
| 15. | Interest due, $....., and accrued, $....., on collateral loans, per Schedule C, Part 1 | ..... | |
| 16. | Interest due, $777.46, and accrued, $....., on premium notes, policy loans or liens | 777.46 | |
| 17. | Interest due, $....., and accrued, $....., on other assets | ..... | |
| 18. | Rents due, $498.77, and accrued, $....., on company's property or lease | 498.77 | |
| 19. | Total interest and rents due and accrued | | 50,818.81 |
| 20. | Market value of real estate over book value, per Schedule A | | 37,269.00 |
| 21. | Market value (not including interest on Item 14) of bonds and stocks over book value, per Schedule D | | ..... |
| 22. | Due from other companies for losses or claims on policies of this company, reinsured | | 6,355.71 |

| | (1) New Business. | (2) Renewals. | |
|---|---|---|---|
| 23. Gross premiums due and unreported on policies in force December 31, 1909 (less reinsurance premiums) | $1,089.28 | $36,437.14 | |
| 24. Gross deferred premiums on policies in force December 31, 1909 (less reinsurance premiums) | 6,596.54 | 62,392.08 | |
| 25. Totals | $7,686.82 | $98,829.22 | |
| 26. Deduct loading | 5,380.08 | 19,765.85 | |
| 27. Net amount of uncollected and deferred premiums | $2,305.74 | $79,063.37 | 81,369.11 |
| 28. All other assets (give items and amounts): Net premiums in course of collection. | | | |
| 29. Safety Fund Dept. | | | 185,000.00 |
| 30. Accrued interest Safety Fund Dept. | | | 13,311.23 |
| 31. | | | |
| 32. | | | |
| 33. Gross Assets | | | $4,897,418.08 |

DEDUCT ASSETS NOT ADMITTED.

| | | |
|---|---|---|
| 34. Company's stock owned, $....; loans on $....$ | | |
| 35. Supplies, stationery, printed matter, $.....; furniture, fixtures and safes, $..... | | |
| 36. Commuted commissions, $....; agents' debit balances, gross, $11,987.66 | 11,987.66 | |
| 37. Cash advanced to or in the hands of officers or agents | | |
| 38. Loans on personal security, endorsed or not, $....; bills receivable, $22,556.91 | 22,556.91 | |
| 39. Premium notes and loans on policies and net premiums in item 27 in excess of the net value of their policies | | |
| 40. Book value of Ledger Assets over market value, viz.: Stock Department | 35,636.43 | |
| 41. Safety Fund Department | 87,695.94 | |
| 42. | | 157,876.94 |
| 43. Admitted Assets | | $4,739,541.14 |

V.—LIABILITIES, SURPLUS AND OTHER FUNDS.

| | | |
|---|---|---|
| Net present value of all the outstanding policies in force on the 31st day of December, 1909, as computed by the Company on the following tables of mortality and rates of interest, viz.: | | |
| 1. Actuaries' table at 4 per cent on* policies issued prior to Jan. 1st, 1901 | $ 610,103.00 | |
| Same for reversionary additions | 604.00 | $ 610,707.00 |

| | | |
|---|---|---|
| 2. American Experience table at 3½ per cent on* policies issued since Jan. 1st, 1901....$1,339,472.00 | | |
| Same for reversionary additions ..... | 1,339,472.00 | |
| 3. American Experience table at .. per cent on*.....$ ..... | | |
| Same for reversionary additions ..... | ..... | |
| 4. Other tables and rates, viz.:* | | |
| .....$ ..... | | |
| ..... ..... | | |
| ..... ..... | | |
| ..... ..... | | |
| ..... ..... | | |
| ..... ..... | | |
| Same for reversionary additions ..... | ..... | |
| 5. Net present value of annuities (including those in reduction of premiums). Give tables and rates of interest, viz.: | | |
| .....$ ..... | | |
| ..... ..... | | |
| ..... ..... | | |
| ..... ..... | | |
| Total .....$1,950,179.00 | | |
| 6. Deduct net value of risks of this company's reinsured in other solvent companies..... | 5,219.00 | |
| | $1,944,960.00 | |
| 7. Reserve to provide for health and accident benefits contained in life policies..... | ..... | |
| 8. Net Reserve ..... | | $1,944,960.00 |
| 9. Present value of amounts not yet due on supplementary contracts not involving life contingencies, computed by the Company's Actuary..... | | 10,896.00 |
| 10. Liability on policies canceled and not included in "net reserve" upon which a surrender value may be demanded | | ..... |
| 11. Claims for death losses due and unpaid.....$ | 166.67 | |
| 12. Claims for death losses in process of adjustment, or adjusted and not due..... | 151,254.20 | |
| 13. Claims for death losses which have been reported and no proofs received..... | 90,500.00 | |
| 14. Claims for matured endowments due and unpaid ..... | ..... | |
| 15. Claims for death losses and other policy claims resisted by the company..... | ..... | |
| 16. Due and unpaid on annuity claims involving life contingencies ..... | ..... | |
| 17. Total Policy Claims..... | | 241,920.87 |
| 18. Due and unpaid on supplementary contracts not involving life contingencies ..... | | ..... |
| 19. Dividends left with the company to accumulate at interest, and accrued interest thereon..... | | 548.10 |

| | | |
|---|---|---|
| 20. | Premiums paid in advance, including surrender values so applied | 6,517.70 |
| 21. | Unearned interest and rent paid in advance | 9,952.20 |
| 22. | Commissions due to agents on premium notes when paid | ..... |
| 23. | Commissions to agents, due or accrued | 866.80 |
| 24. | "Cost of collection" on uncollected and deferred premiums, in excess of the loading thereon | ..... |
| 25. | Salaries, rents, office expenses, bills and accounts due or accrued | 2,092.39 |
| 26. | Medical examiners' fees, $1,415.50, and legal fees, $547.60, due or accrued | 1,963.10 |
| 27. | State, county and municipal taxes due or accrued, including balance on hand to pay taxes Safety Fund Dept. | 34,913.69 |
| 28. | Advances by officers or others on account of expenses of organization or otherwise | ..... |
| 29. | Borrowed money, $....., and interest thereon, $ | ..... |
| 30. | Unpaid dividends to stockholders | ..... |
| 31. | Dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums | 22,155.40 |
| 32. | Dividends declared on or apportioned to annual dividend policies payable to policy-holders during 1910, whether contingent upon the payment of renewal premiums or otherwise | 3,566.82 |
| 33 | Dividends declared on or apportioned to deferred dividend policies payable to policy-holders during 1910 | 9,612.19 |
| 34. | Amounts set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies, not included in Item 33 | 137,651.26 |
| 35. | Reserve, special or surplus funds not included above (give items and amounts separately, and state for what purpose each of said funds is held): | |
| 36. 37. | Dividends declared on deferred dividend policies, Payable to policy-holders subsequent to 1910 | 6,176.69 |
| 38. | ..... | |
| 39. | All other liabilities (give items and amounts): | |
| 40. | Safety Fund, Men's Division, principal account, $954,060.50; income account, $11,456.94; | |
| 41. | Safety Fund, Women's Division, principal account, $124,597.85; income account, $1,854.39; | |
| 42. | Mortuary Fund, Men's Division, $74,772.25; Women's Division, $84,155.38; | |
| 43. | *Reserve on stipulated premium policies, $1,565.00; surplus on stipulated premium policies, $38,120.89 | 1,290,583.20 |
| 44. | Capital stock | 500,000.00 |
| 45. | Unassigned funds (surplus) | 515,164.73 |
| 46. | Total | $4,739,541.14 |

*State definitely the dates of issue and class of policies covered by each basis of valuation.

JONES, HOCKER, SULLIVAN & ANGERT,
*Attorneys for Defendant-Appellant.*

And thereafter, on the 2nd day of June, 1919, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 1, April Term, 1919.

#21314.

ROSA BARBER, Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Appellant.

Appeal from the Circuit Court of Johnson County.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Johnson County rendered, be in all things affirmed, and stand in full force and effect, and that the said respondent recover against the said appellant her costs and charges herein expended and have therefor execution.

(Opinion filed.)

And thereafter, on the 11th day of June, 1919, there was filed in the office of the clerk of said Supreme Court the appellant's motion for rehearing, which said motion for rehearing is in the words and figures following, to-wit:

In the Supreme Court of Missouri, Division No. 1.

No. 21314.

ROSA BARBER, Plaintiff-Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

*Appellant's Motion for Rehearing.*

Now comes the appellant in the above-entitled cause and respectfully moves the Court to grant it a rehearing herein, and for grounds thereof appellant assigns the following reasons:

First. The Court erred in holding that the inclusion of 15 cents in the assessment to cover the tax of 2 per cent paid by appellant to the State of Missouri under the provisions of Section 7099 of the Revised Statutes of Missouri 1909, rendered such assessment illegal and void, and that the non-payment of such as-

assessment constituted no ground for the forfeiture of the insurance; that in so holding the Court has failed to give full faith and credit to the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser et al. v. Hartford Life Insurance Company et al., in this (1) that under said decree such excess in the assessment did not vitiate the assessment, but simply rendered succeeding assessments subject to credit for such excess (Hartford Life Insurance Co. v. Barber, 245 U. S. 151); and (2) because it was held by the Court of Connecticut in the Dresser decree that the Mortuary Fund of the Safety Fund Division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime and the continuance of said certificates, whereas this court holds that the certificate in suit is payable out of the Mortuary Fund notwithstanding the conceded and admitted fact that assessment or call 126 levied against the insured prior to his death was not paid when due.

Second. The Court erred in not holding that the question of the inclusion of the 15-cent tax was not properly before the trial court, because all questions concerning that tax were necessarily before the Supreme Court of the United States upon the former writ of error in this case in that court, and the decision on that writ of error became the law of the case, controlling upon the trial court on the second trial of the case.

Third. The Court erred in not holding that the trial court erred in refusing to instruct the jury, as requested by the appellant (defendant), that upon the former writ of error in the Supreme Court of the United States in this case the particular assessment or call in question, No. 126, levied against the insured, Frank Barber, under the certificate or policy sued on herein, was declared valid and legal, and the plaintiff was therefore estopped, by reason of such finding and holding of the Supreme Court, from asserting the contrary.

Fourth. The Court erred in sustaining the action of the trial court in refusing to give to the jury the following instruction requested by the appellant (defendant), to wit:

"The Court instructs the jury that the plaintiff is estopped by the decision and judgment of the Supreme Court of the United States on the former appeal of this case from asserting that assessment or call No. 126, levied against the said Frank Barber by the defendant under the certificate sued on herein, was illegal or void because of the fact that 2 per cent of the amount of said assessment was demanded of the said Frank Barber by the defendant as a tax payable to the State of Missouri on account of such assessment."

Fifth. The Court erred in sustaining the action of the trial court in refusing to instruct the jury, as requested by the appellant (defendant), that Section 7068, Revised Statutes of Missouri, 1909, and the Act of March 30, 1911 (Laws of Missouri for 1911, page 282),

in amendment thereof, did not authorize a recovery against the defendant of anything in the way of damages and attorneys' fees under the evidence in this case; that, in thus sustaining the action of the trial court, the defendant is deprived of its property without due process of law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Sixth. The Court erred in sustaining the action of the trial court in submitting to the jury the question of the imposition against appellant (defendant) of damages and attorneys' fees as for vexatious delay; that Section 7068, Revised Statutes of Missouri, 1909, and the Act of March 30, 1911 (Laws of Missouri for 1911, page 282), in amendment thereof, as construed to apply to the facts in this case, are unconstitutional and void, because the statute, as so construed, deprives the defendant of its property without due process of law, and, as so construed, the statute aforesaid is repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and, therefore, unconstitutional and void.

Seventh. The Court erred in affirming the judgment of the trial court in this, that the judgment of the trial court in its present form deprives the defendant of its property without due process of law and denies to it the equal protection of the law and also denies to it its liberty to contract, all contrary to and in violation of the Fourteenth Amendment (Article XIV, Section 1, of the Amendments) of the Constitution of the United States, for the reason that the judgment is against the defendant generally, whereas the certificate sued on by the plaintiff herein expressly provides that all indemnity matured by deaths of members holding certificates in the safety fund department of the defendant company shall be paid out of the mortuary fund, and not otherwise, the defendant being merely a trustee of the mortuary fund, administering the same in accordance with the provisions of the certificate and the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser et al. v. Hartford Life Insurance Company et al.

Respectfully submitted,

JONES, HOCKER, SULLIVAN & ANGERT,
*Attorneys for Appellant.*

Filed Jun- 11, 1919. J. D. Allen, Clerk Supreme Court.

And on the same day, to wit, the 11th day of June, 1919, there was filed in the office of the clerk of said Supreme Court appellant's Motion to Modify Judgment of the Supreme Court, which said motion is in the words and figures following, to wit:

In the Supreme Court of the State of Missouri, Division No. 1.

No. 21314.

ROSA BARBER, Plaintiff-Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

*Motion to Modify Judgment of the Supreme Court.*

Now comes the appellant (defendant) in the above-entitled cause and respectfully moves the Court to modify its judgment of affirmance herein by first directing a modification of the judgment in the trial court for the following reason, to wit:

The judgment of the trial court is entered against the appellant (defendant) in this cause generally, while it is provided in the certificate sued on by the plaintiff herein that all indemnity matured by deaths of members holding certificates in the Safety Fund Department of the defendant company shall be paid out of the Mortuary Fund, and not otherwise (Rec., p. —); that the judgment affirmed herein does not conform to the judgment ordered and directed in the case of Young et al. v. Hartford Life Insurance Co., No. 19825, decided March 28, 1919, 211 S. W. 1.

That the judgment in its present form therefore deprives the defendant of its property without due process of law and denies to it the equal protection of the law, and also denies to it its liberty to contract—all contrary to and in violation of the Fourteenth Amendment (Article XIV, Section 1, of the Amendments) to the Constitution of the United States.

Respectfully submitted,

JONES, HOCKER, SULLIVAN & ANGERT,

*Attorneys for Appellant.*

Filed Jun. 11, 1919. J. D. Allen, Clerk Supreme Court.

And on the same day, to wit, the 11th day of June, 1919, there was filed in the office of the clerk of said Supreme Court Appellant's Motion to Transfer to Court En Banc, which said motion is in the words and figures following, to wit:

In the Supreme Court of the State of Missouri, Division No. 1.

No. 21314.

ROSA BARBER, Plaintiff-Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

*Appellant's Motion to Transfer to Court en Banc.*

Now comes the defendant-appellant and respectfully moves the Court to transfer this cause to the Court en banc, for the reason that there are certain federal questions involved, as set out in the motion for a rehearing and the motion to modify filed by the appellant simultaneously herewith, pursuant to the provisions of Section 4 of the Amendment of 1890 to Article VI of the Constitution of Missouri, which provides:

"When a federal question is involved, the cause, on the application of the losing party, shall be transferred to the Court for its decision."

Respectfully submitted,

JONES, HOCKER, SULLIVAN & ANGERT,

*Attorneys for Appellant.*

Filed Jun- 11, 1919. J. D. Allen, Clerk Supreme Court.

And thereafter, on the 9th day of July, 1919, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri, Division No. 1, April Term, 1919.

No. 21314.

ROSA BARBER, Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Appellant.

Now at this day, the Court having considered and fully understood the motion for rehearing, motion to modify judgment of the Supreme Court, and motion to transfer to Court En Banc, heretofore filed herein by the said appellant, the Court doth order and adjudge that said motions, and each of them, be, and the same are hereby overruled.

The opinion of said Supreme Court in said cause, filed in the office of the clerk of said Court on the 2nd day of June, 1919, is in the words and figures following, to-wit:

In the Supreme Court of Missouri, Division No. 1, April Term, 1919.

No. 21314.

ROSA BARBER, Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Appellant.

Appeal from the Circuit Court for Johnson County.

This is a suit founded upon a certificate of life insurance upon the life of Frank Barber for $2,000.00 for the benefit of plaintiff, then his wife and now his widow. It is dated September 4, 1893. Mr. Barber died June 5, 1910. The defendant, which issued the certificate, was then and still is an insurance company incorporated and having its principal place of business in Connecticut and doing business in Missouri. When this certificate was issued, and for a long time before and ever since, it has been doing business in this state as a stock company, issuing old line insurance, and has also operated what it called a "Safety Fund Department," which issued certificates on the assessment plan until 1899 when it ceased issuing such policies but continued to administer that department with respect to the certificates already issued. Barber complied faithfully with the conditions of his certificate up to March 31, 1910, when it was cancelled by the defendant on the alleged ground that he had failed to pay a mortuary assessment and a contribution to the expense fund then due and payable according to its terms.

This suit was instituted June 17, 1911, and was tried in the Johnson Circuit Court, where plaintiff had judgment upon a verdict for the amount of the face of the certificate with interest, $209.00 damages for vexatious delay and $500,00 for attorney's fees. An appeal from that judgment was prosecuted to this court, where, on July 3 1916, it was affirmed in an opinion published in volume 269 Missouri Supreme Court Reports, at page 21 and following. In that opinion the principal facts, including the provisions of the certificate applicable to them, were fully stated and will not be repeated here but will be referred to as necessary to the understanding of the questions now before us.

A writ of error from the Supreme Court of the United States was directed to this court, upon which our judgment was taken to that court for review upon certain matters wherein it was asserted that full faith and credit had not been given to certain public acts and judicial proceedings of the state of Connecticut. This referred to the power and duty of the directors under its charter in making mortuary assessments upon the certificates issued by the Safety Fund Department, and a judgment of a Connecticut court in a suit by one Dresser, on behalf of himself and all such certificate holders, in which it was adjudged that the Safety Fund Department had the right to

maintain, by assessment, a fund for the prompt payment of losses, to be replenished by assessments for such losses when made and collected. The cause was heard in said court and our judgment reversed upon the last stated of these Federal questions in an opinion printed in volume 245 of the reports of said court at page 146 and following, which closes with the following words: "We are of opinion that full faith and credit was not given to the Connecticut record and that for that reason the present judgments must be reversed." It also said, in the course of the opinion, that "A jury would have been justified, at least, in finding that the call was made by the directors within the meaning of the instructions although it did not appear that the directors went over the figures of the officers who made it up, and voted it specifically."

The judgment and mandate of the court concludes as follows:

"And it is further ordered that this cause be, and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court. November 19, 1917.

"And the same is hereby remanded to you, the said judges of the said Supreme Court of the State of Missouri, in order that such execution and further proceedings may be had in said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding."

Upon receiving the mandate this court entered and transmitted to the Johnson Circuit Court the following mandate:

"Now, at this day, pursuant to the mandate of the Supreme Court of the United States, heretofore filed herein, reversing the judgment of this Court in said cause, it is ordered by the Court that the judgment of this Court in said cause, entered on the 30th day of March, 1916, affirming the judgment rendered herein by the said Circuit Court of Johnson County, be, and the same is hereby set aside and for naught held. It is further considered and adjudged by the Court, in conformity with the said mandate of the Supreme Court of the United States, that the judgment aforesaid of the said Circuit Court of Johnson County, rendered on the 27th day of November, 1912, be reversed, annulled and for naught held and esteemed, and that the said appellant be restored to all things which it has lost by reason of the said judgment. It is further considered and adjudged by the Court that the said cause be remanded to the said Circuit Court of Johnson County for a new trial. And it further appearing to the Court that on the 28th day of June, 1918, the Court made and directed the entry of an order overruling a motion therefore filed by the said appellant to tax the costs herein, no order is therefore made adjudging costs."

In pursuance of this mandate the cause was retried and the judgment rendered for the amount of the certificate and interest, with statutory damages and attorneys' fee for vexatious delay, from which this appeal is taken.

1. At this trial it was shown, both by the defendant's amended pleadings and the evidence, that in each assessment made by the defendant upon this certificate, including the one on which the alleged forfeiture is based, a sum was included representing a state tax of two per cent upon the amount thereof. The sums so paid amounted in all to $11.93, and defendant undertook to justify its exaction under the provisions of section 7099 of the Revised Statutes of Missouri as in force, in different forms, during the entire life of this certificate. The amount so included in the unpaid assessment was fifteen cents and its inclusion was and is assigned by the plaintiff as a ground for avoiding the forfeiture. The assessment on which the cancellation is based also contained a charge of $1.50 for quarterly expense dues which the plaintiff asserts was not yet due.

The defendant at the trial objected to the consideration of each of these matters on the ground that they had been already determined by the judgment of the Supreme Court of the United States to which we have referred. The theory of this objection, so far as we are able to understand it, is that the reversal conclusively adjudicated that the certificate was in force at the former trial in the Circuit Court. Otherwise the judgment should have been affirmed, notwithstanding the errors found in the record with respect to the Federal questions on which the writ of error stood.

Although there was some evidence in the former trial that some such tax had been included in the assessment in question no such point was made either in the pleadings or at the trial, or mentioned or decided by this court, which placed its affirmance solely upon the two Federal questions upon which the writ of error from the United States Supreme Court was based. Our judgment was against the validity of the assessment and the forfeiture by its non-payment. It implied nothing in its favor. The matter now before us is purely a question arising under the laws of this state, of which the Supreme Court of the United States could take no cognizance upon writ of error. (Water-Pierce Oil Co. vs. Texas, (No. 1) 212 U. S., 86, 97, 112; Same vs. Same, Id. (No. 2) 112, 118; Sauer vs. City of New York, 206 U. S. 536, 546; Eustis vs. Bolles, 150 U. S. 361; Murdock vs. Memphis, 20 Wall. 590; Cohens vs. Virginia, 6 Wheat. 264.) These and many other cases which follow the Cohens case, supra, have established the rule which is forcibly and logically stated by Mr. Justic- Moody in the Sauer case as follows: (p. 547) "This court, whose highest function it is to confine all other authorities within the limits prescribed for them by the fundamental law, ought certainly to be zealous to restrain itself within the limits of its own jurisdiction, and not be insensibly tempted beyond them by the thought that an unjustified or harsh rule of law may have been applied by the state courts in the determination of a question committed exclusively to their care." It was further said by the same eminent judge in the same case (p. 545): "This court does not hold the relation to the controversy between these parties which the Court of Appeals of New York had. It was the duty of that court to ascertain, declare and apply the law of New York, and its determina-

tion of that law is conclusive upon this court." It is clear that if the question now presented, which is clearly dependent solely of the construction and effect of a tax law of this state and the contractual relations with reference thereto of the parties to a Missouri contract was decided by this court in the former case, then the Supreme Court of the United States had no jurisdiction and did not intend by its judgment to adjudicate to the contrary.

Even had the question now brought before us been a Federal question it would have been eliminated from the case in the former appeal by our action in basing our affirmance upon other grounds. (Water-Pierce Oil Co. vs. Texas, (No. 1), supra; Missouri, Kansas and Texas Ry. Co. vs. Ferris, 179 U. S. 602; Harrison vs. Morton, 171 U. S. 38; Glue Company vs. Glue Company, 187 U. S. 611.) Only such questions as were before the Supreme Court of the United States and were decided by it became the law of the case by force of its judgment. Its opinion in express terms confines its decision entirely to the two Federal questions, to which we have already referred, and places its judgment upon the sole ground that, in our judgment, we failed to give full faith and credit to the Connecticut record in the Dresser case. We are without authority to extend the force and effect of that decision to other questions of which that court had no jurisdiction and did not attempt to determine. (In re Potts, Petitioner, 166 U. S. 263; Mutual Life Insurance Co. vs. Hill, 193 U. S. 551; Ex parte Union Steamboat Co., 178 U. S. 317; In re Sanford Fork and Tool Co., 160 U. S. 247; Barney vs. Winona, 117 U. S. 228.)

Our judgment remanding the cause to the Johnson Circuit Court for retrial was in full accord with the mandate of the Supreme Court of the United States, and gave the trial court full jurisdiction, not only to retry the issues of fact presented by the pleadings in the first trial in accordance with the principles announced in the judgment and opinion of the Supreme Court of the United States but also to reframe those issues as provided by our code. A retrial does not mean a mere replica of the former trial, but is a trial, as the term implies, in the light of the experience and knowledge which may have been acquired in the interval. This question was fully discussed by us in Wilcox vs. Phillips, 260 Mo. 664, 676, 677-8.

2. The real question upon which this case seems to have turned in the trial court is whether or not, by the terms of this certificate, the insurance was forfeited by the failure of the insured to pay the assessment made as of March 1, 1910. It is admitted that this assessment, as well as all other quarterly assessments made to pay losses since the issue of the certificate in September 1893 included a charge for taxes assessed or to be assessed by and paid to the State of Missouri by the defendant under the following provision of the contract: "If the laws of any country, state, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls thereon shall be determined so as to cover such tax." It is contended by defendant that the law of the state of Missouri now embodied in section 7099 of the Re-

vised Statutes of 1909 requiring the payment of a tax of two per cent upon premiums received on account of business done in this state, also required the payment of a tax similar in amount on all mortuary assessments made and collected from the holders of certificates or policies issued on the assessment plan, and that such liability of the insurer would constitute a valid charge against the insured under the terms of this certificate. In this way the defendant had, during the life of this policy, assessed and collected from Barber upon its quarterly assessments $11.93 as tax required by the laws of this state. In no case nor at any time had it been revealed to him by the form of the notice of such assessment or otherwise, that it included any such item or was made upon that plan. We cannot assume that he was advised by law of an unlawful charge, nor of a fact which was not disclosed by the data in his possession. The assessment in question included the tax which, upon defendant's theory, was afterward to be paid to the state. The question is whether this tax was exacted by the state by the statutory provision above cited.

It is unnecessary, in view of the former decisions of this court to elaborate this question otherwise then by citing those cases. The word "premium," in its application to insurance contracts, has a well settled meaning. The meaning of the word "assessment," in the same connection is equally well understood. It is upon this distinction that life insurance is divided by our legislature into two general classes or plans, called the stipulated premium plan (Sec. 6963 R. S. 1909) and the assessment plan (Sec. 6950 Id.). As early as the October term, 1896 this court had before it the same question in Masonic Aid Association vs. Waddill, 138 Mo. 628. Referring to the taxation of assessment companies under this same provision we said: "To hold that moneys received by them as 'assessments' under this plan are 'premiums' within the meaning of section 2 (5958), which is now one of the 'provisions or requirements of the general insurance laws of this State,' would not only be to confound terms and disregard the well defined distinction made between them by the statute as a whole but to ignore or directly contravene this proviso of section 5869." These references are to the Revised Statutes of 1889. The same question was last before us in Young vs. Hartford Life Insurance Company, No. 19,825, not yet published, in which the intermediate decisions of this court and the Courts of Appeals were cited, and the cause disposed of by holding that the assessment including the two per cent tax was void, and that its non-payment constituted no ground for the forfeiture of the insurance. This case is peculiarly applicable, the certificate having been issued against the same fund as the one now in question, and upon the same terms with reference to forfeiture by non-payment of assessments.

These cases are founded upon a marked legislative distinction between a tax upon a burden resting upon the insured, in which the insurer can have no interest, but is a mere conduit between him and his associates, and the ordinary excise tax upon the receipts from the business of an insurer from which its profits are derived. In

this case, which is a typical one, a separate payment is exacted from the insured for expenses which necessarily includes the profits of the company, while the tax is recouped from the mortuary assessment alone. These simply represent a mutual burden.

While the legislative policy requires no justification we think it stands on solid ground.

3. The defendant makes the point that it is doing this assessment business without a special license therefor but simply as an old line joint stock company. Appropriating the language of the Supreme Court of the United States in the same case, we are inclined to consider this a mere makeshift, which adds nothing to the substantial basis of this case. Whatever profit it may have made from its wrong must bear the burden of the resulting loss.

4. The defendant has asked with much earnestness for our consideration of the fact that in the assessment involved in this case the tax amounted only to fifteen cents, and insists that the entire mortuary fund to which it accrues belongs to the certificate holders and that it is inequitable therefore to sustain this certificate against its attempted cancellation. We see no force in this contention. The law, it is said, abhors a forfeiture. This aversion has resulted in the rule that it may be prevented by construction as technical as that by which it is invoked. In this case the deceased has not only paid illegal exaction amounting to nearly, if not quite the amount of his alleged delinquency, but has paid a considerable sum into a fund which is held for distribution among living certificate holders when the amount of insurance in force shall have decreased to one million dollars. The defendant ceased to issue this class of insurance in 1899 and the time of distribution is rapidly approaching. While equities are not available in cases of this character we can see no equity in the defendant which can call for mitigation of the legal rule. We have referred to this question in greater detail in Barber vs. Hartford Insurance Company, supra and Young vs. Hartford Life Insurance Company, supra.

5. We see nothing in the fact that we, when the cause was first before us, committed error in the decision of the Federal question upon which our judgment was reversed, which affects the right of plaintiff to damages and attorneys' fees. We think the question was properly and fairly submitted. Barber vs. Insurance Co., 259 Mo. l. c. 42, and cases cited.

Holding, as we do, that the certificate sued on was not by its terms subject to cancellation for failure to pay the assessment in question and finding no other error in the record, we affirm the judgment of the Circuit Court for Johnson County.

STEPHEN S. BROWN,
*Commissioner.*

Railey, C., not sitting.

*Per Curiam:*

The foregoing opinion of Brown, C., is adopted as the opinion of the Court.

Blair, P. J., and Bond and Graves, JJ., concur.

Filed Jun- 2, 1919. J. D. Allen, Clerk Supreme Court.

In the Supreme Court of Missouri.

No. 21314.

ROSA BARBER, Plaintiff-Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

*Petition for Allowance of Writ of Error.*

Now comes your petitioner, Hartford Life Insurance Company, by its attorneys, F. W. Lehmann and James C. Jones, and respectfully shows that on the second day of June, 1919, the Supreme Court of the State of Missouri, being the highest court of the State of Missouri in which a decision of the suit could be had, rendered a judgment against your petitioner for the sum of Three Thousand Nine Hundred and Twenty-four Dollars and Thirty Cents ($3,924.30), and in which a motion for a rehearing was denied on the ninth day of July, 1919, as will appear by a reference to the record and proceedings in said cause.

Your petitioner respectfully claims the right to remove said record and judgment to the Supreme Court of the United States by writ of error under the statutes of the United States authorizing writs of error to state Courts and, particularly, under section 237 of the Judicial Code as amended, because in the record and proceedings had in said cause and in the rendition of said judgment manifest error hath happened to the great injury and damage of your petitioner in that:

1. The court erred in sustaining the action of the trial court in giving to the jury that portion of the instruction requested by the plaintiff which authorized the assessment against defendant of damages and attorney's fee (record page 390) for the reason that the statute of Missouri, section 7068 Revised Statutes of Missouri 1909, as amended by the Act of March 30, 1911 (laws of Missouri for 1911, page 282) is unconstitutional and void because the same is in violation of Section 10, Article I of the Constitution of the United States and of Section 1 of the Fourteenth Amendment to the Constitution of the United States and because the construction thereof by the Courts of Missouri in this case constitutes a rule of judicial

construction violative of said provisions of the Constitution of the United States, and because the application of said statute to the facts of this case denies to the defendant due process of law as guaranteed to it by the Constitution of the United States.

2. The Court erred in sustaining the action of the trial court in submitting to the jury the question of the imposition against appellant (defendant) of damages and attorneys' fees as for vexatious delay; that Section 7068 of the Revised Statutes of Missouri 1909 as amended by the Act of March 30, 1911 (laws of Missouri for 1911, page 282) as construed by the trial court to apply to the facts of this case, is unconstitutional and void, because the statute, as so construed deprives the defendant of its property without due process of law, and as so construed the statute aforesaid is repugnant to the provisions of section 1 of the Fourteenth amendment to the Constitution of the United States and, therefore, unconstitutional and void.

3. The court erred in sustaining the action of the trial court in refusing to instruct the jury, as requested by the appellant (defendant) that upon the former writ of error in the Supreme Court of the United States in this case, the particular assessment or call in question No. 126 levied against the insured, Frank Barber, under the certificate or policy sued on herein was declared valid and legal and by reason of such finding and holding of the Supreme Court of the United States the plaintiff was estopped from asserting the contrary.

4. The court erred in not holding that the question of the inclusion of the Fifteen cents tax, in assessment No. 126 levied against the insured, Frank Barber, was not properly before the trial court for the reason that all questions concerning that tax were necessarily before the Supreme Court of the United States upon the former writ of error in this case in that court and the decision on that writ of error became the law of the case controlling upon the trial court on the second trial of said case and upon the Supreme Court of the state upon the appeal from such second trial.

5. The court erred in holding that the inclusion of Fifteen cents in the assessment or call No. 126 against the insured, Frank Barber, to cover the tax of two per cent paid by appellant to the State of Missouri under the provisions of Section 7099 of the Revised Statutes of Missouri 1909, rendered such assessment excessive and void, and that the non-payment of such assessment constituted no ground for the forfeiture of the insurance; that in so holding the court has failed to give full faith and credit to the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser, et. al. vs. Hartford Life Insurance Company, et al. (an exemplified copy of the record and decree in which case was offered and received in evidence at the trial of this cause) contrary to and in violation of Article IV, Section I of the Constitution of the United States, in this (1) that said assessment or call 126 was adjudged to be valid and lawful by the Connecticut in the Dresser decree; (2) that

under the Dresser decree it was adjudged that an excess in an assessment, if any, should not vitiate or invalidate the assessment, but should simply render the succeeding assessment subject to credit for such excess; and (3) because it was held by the court of Connecticut in the Dresser decree that the Mortuary Fund of the Safety Fund Division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime and the continuance of said certificates, whereas the trial court and the Supreme Court of Missouri hold that the certificate in suit is payable out of the Mortuary Fund notwithstanding the conceded and admitted fact that assessment or call 126 levied against the insured prior to his death was not paid when due.

Your petitioner further shows to the court that by reason of the aforesaid matters and things there is drawn in question the validity of a statute of the State of Missouri on the ground of its being repugnant to the Constitution of the United States and the decision was in favor of its validity and also that a right, privilege and immunity was claimed by your petitioner under the Constitution of the United States and was set up and brought into question and the decision was against the right, title and privilege so set up by your petitioner.

Considering itself aggrieved by the final decision of the Supreme Court of Missouri in rendering judgment against it in the above entitled cause, your petitioner prays a writ of error from said decision and judgment to the Supreme Court of the United States and order fixing the amount of a supersedeas bond, and your petitioner will ever pray.

F. W. LEHMANN,
JAMES C. JONES,
*Attorneys for Petitioner.*

STATE OF MISSOURI,
*City of Jefferson, ss:*

Let the writ of error issue upon the execution of a bond by the Hartford Life Insurance Company in the sum of Seven Thousand dollars, such bond to act as a supersedeas.

R. F. WALKER,
*Acting Chief Justice of the Supreme Court of Missouri.*

Dated this 28th day of July, 1919.

The order of Hon. R. F. Walker, Acting Chief Justice of the Supreme Court of Missouri, in chambers, allowing a writ of error in said cause, and approving the bond filed by the Hartford Life Insurance Company, petitioner, is in the words and figures following, to wit:

In the Supreme Court of Missouri.

No. 21314.

ROSA BARBER, Respondent,

v.

HARTFORD LIFE INS. CO., Appellant.

The matter herein coming on to be heard upon the petition of the Hartford Life Insurance Company, defendant, for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, and upon an examination of the petition therefor and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions submitted by the record in this cause, it is ordered that a writ of error be, and is hereby, allowed to this Court from the Supreme Court of the United States, and that the bond presented by the petitioner, the Hartford Life Insurance Company, be, and the same is, hereby approved.

R. F. WALKER,
*Acting Chief Justice of the Supreme Court of Missouri.*

July 28, 1919.

[Endorsed:] No. 21314. In the Supreme Court of Missouri. Rose Barber, Plaintiff-Respondent, vs. Hartford Life Insurance Company, Defendant-Appellant. Petition for Allowance of Writ of Error. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

In the Supreme Court of Missouri.

No. 21314.

ROSA BARBER, Plaintiff-Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

*Assignment of Errors.*

Plaintiff in error, Hartford Life Insurance Company complains of Rosa Barber and says that there is manifest error in the record and proceedings in the above entitled cause, and in the decision and judgment of the Supreme Court of the State of Missouri, in this, to-wit:

1. The court erred in sustaining the action of the trial court in giving to the jury that portion of the instruction requested by the

plaintiff which authorized the assessment against defendant of damages and attorney's fee (record page 290) for the reason that the statute of Missouri, section 7068 Revised Statutes of Missouri 1909, as amended by the Act of March 30, 1911 (laws of Missouri for 1911, page 282) is unconstitutional and void because the same is in violation of Section 10, Article I of the Constitution of the United States and of Section 1 of the Fourteenth amendment to the Constitution of the United States and because the construction thereof by the Courts of Missouri in this case constitutes a rule of judicial construction violative of said provisions of the Constitution of the United States, and because the application of said statute to the facts of this case denies to the defendant due process of law as guaranteed to it by the Constitution of the United States.

2. The court erred in sustaining the action of the trial court in submitting to the jury the question of the imposition against appellant (defendant) of damages and attorney's fees as for vexatious delay; that Section 7068 of the Revised Statutes of Missouri 1909 as amended by the Act of March 30, 1911, (laws of Missouri for 1911, page 282) as construed by the trial court to apply to the facts of this case, is unconstitutional and void, because the statute, as so construed deprives the defendant of its property without due process of law, and as so construed the statute aforesaid is repugnant to the provisions of section 1 of the Fourteenth amendment to the Constitution of the United States and, therefore, unconstitutional and void.

3. The court erred in sustaining the action of the trial court in refusing to instruct the jury, as requested by the appellant (defendant) that upon the former writ of error in the Supreme Court of the United States in this case, the particular assessment or call in question No. 126 levied against the insured, Frank Barber, under the certificate or policy sued on herein was declared valid and legal and by reason of such finding and holding of the Supreme Court of the United States the plaintiff was estopped from asserting the contrary.

4. The court erred in not holding that the question of the inclusion of the Fifteen cents tax, in assessment No. 126 levied against the insured, Frank Barber, was not properly before the trial court for the reason that all questions concerning that tax were necessarily before the Supreme Court of the United States upon the former writ of error in this case in that court and the decision on that writ of error became the law of the case controlling upon the trial court on the second trial of said case and upon the Supreme Court of the state upon the appeal from such second trial.

5. The court erred in holding that the inclusion of fifteen cents in the assessment or call No. 126 against the insured, Frank Barber, to cover the tax of two per cent paid by appellant to the State of Missouri under the provisions of Section 7099 of the Revised Statutes of Missouri 1909, rendered such assessment excessive and void, and that the non-payment of such assessment contituted no ground for the forfeiture of the insurance; that in so holding the Court has

failed to give full faith and credit to the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser, et al. vs. Hartford Life Insurance Company, et al. (an exemplified copy of the record and decree in which case was offered and received in evidence at the trial of this cause) contrary to and in violation of Article IV, Section I of the Constitution of the United States, in this (1) that said assessment or call 126 was adjudged to be valid and lawful by the Connecticut Court in the Dresser decree (2) that under the Dresser decree it was adjudged that an excess in an assessment, if any, should not vitiate or invalidate the assessment, but should simply render the succeeding assessment subject to credit for such excess; and (3) because it was held by the Court of Connecticut in the Dresser decree that the Mortuary Fund of the Safety Fund Division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime and the continuance of said certificates, whereas the trial court and the Supreme Court of Missouri hold that the certificate in suit is payable out of the Mortuary Fund notwithstanding the conceded and admitted fact that assessment or call 126 levied against the insured prior to his death was not paid when due.

For which errors the plaintiff in error prays that the judgment of the Supreme Court of the State of Missouri may be reversed and that the cause be remanded with such directions as, according to law and justice shall seem meet and proper to the Supreme Court of the United States.

F. W. LEHMAN,
JAMES C. JONES,
*Attorneys for Hartford Life Insurance Company, Plaintiff in Error.*

[Endorsed:] No. 21314. In the Supreme Court of Missouri. Rosa Barber, Plaintiff-Respondent, vs. Hartford Life Insurance Company, Defendant-Appellant. Assignment of Errors. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

Copy.

In the Supreme Court of Missouri.

No. 21314.

ROSA BARBER, Plaintiff-Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

*Bond.*

Know all men by these presents,

That we, Hartford Life Insurance Company, a corporation duly organized and existing under the laws of the State of Connecticut, as principal, and Globe Indemnity Company, as surety, are held and firmly bound unto Rosa Barber, in the full and just sum of Seven Thousand Dollars ($7,000.00) to be paid to the said Rosa Barber, her heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our successors or assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23rd day of July 1919.

Whereas the above named Hartford Life Insurance Company seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Missouri.

Now, therefore, the condition of this obligation is such, that if the above named Hartford Life Insurance Company shall prosecute its said writ of error to effect and answer all damages and costs that may be adjudged against it if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

HARTFORD LIFE INSURANCE COMPANY,
By JONES, HOCKER, SULLIVAN & ANGERT,
*Its Agents and Attorneys.*

[SEAL.] GLOBE INDEMNITY COMPANY,
By PAUL W. GRAY,
*Attorney in Fact.*
By LE GRAND L. ATWOOD,
*Attorney in Fact.*

The above bond is approved to operate as a supersedeas this 28th day of July, 1919.

R. F. WALKER,
*Acting Chief Justice of the Supreme Court of the State of Missouri.*

*Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Rosa Barber, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Missouri, wherein the Hartford Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable R. F. Walker, Chief Justice of the Supreme Court of the State of Missouri in the absence from the State of H. W. Bond, Chief Justice, this 28th day of July, 1919.

R. F. WALKER,
*Chief Justice of the Supreme Court of the State of Missouri in the Absence from the State of H. W. Bond, Chief Justice.*

Attest:
J. D. ALLEN,
*Clerk of the Supreme Court of the State of Missouri.*

We hereby acknowledge service of the foregoing citation this 29th day of July, 1919.

ROBERT KELLEY,
N. M. BRADLEY,
M. D. ABER,
CHAS. E. MORROW,
*Attorneys for Rosa Barber, Defendant in Error.*

[Endorsed:] Rosa Barber, Plaintiff-Respondent, vs. Hartford Life Insurance Company, Defendant-Appellant. Citation. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

*Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or

some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Rosa Barber and the Hartford Life Insurance Company, a corporation, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened, to the great damage of the said Hartford Life Insurance Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 28th day of July, in the year of Our Lord One Thousand Nine Hundred and Nineteen.

Issued at office in the City of Jefferson City with the seal of the District Court of the United States for the Central Division of the Western Judicial District of Missouri and dated as aforesaid.

[Seal of the United States District Court of Missouri, Central Division, Western District.]

EDWIN R. DURHAM,
*Clerk of the District Court of the United States for the Central Division of the Western Judicial District of Missouri,*
By H. C. GEISBERG,
*Deputy.*

Allowed July 28th, 1919.
R. F. WALKER,
*Chief Justice of the Supreme Court of Missouri in the Absence of H. W. Bond, C. J., from the State.*

*Return to Writ of Error.*

STATE OF MISSOURI, *ss:*

In obedience to the command of the within writ of error I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled cause, together with all things concerning the same.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Supreme Court of Missouri this 5 day of August, 1919.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
*Clerk of the Supreme Court of the State of Missouri.*

[Endorsed:] Rosa Barber, Plaintiff-Respondent, vs. Hartford Life Insurance Company, Defendant-Appellant. Writ of Error. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

In the Supreme Court of Missouri.

No. 21314.

ROSA BARBER, Plaintiff-Respondent,

vs.

HARTFORD LIFE INSURANCE COMPANY, Defendant-Appellant.

*Præcipe for Transcript.*

To the Clerk of the Supreme Court of the State of Missouri:

You will please prepare a certified transcript of the record upon the writ of error allowed in the above entitled cause on the 28th day of July, 1919, for a review of the judgment in said cause by the Supreme Court of the United States, and include in such transcript the following papers:

A complete copy of the record on appeal from the trial court, and filed in your office, and upon which said cause was heard and determined, in the Supreme Court of the State of Missouri, including therein certified copy of the judgment appealed from, abstract of the record and a copy of each of the additional and supplemental abstracts of record prepared by both parties.

You will also include in said transcript of the record the following:

(1) Judgment of the Supreme Court of the State of Missouri.

(2) Appellant's motion for rehearing.

(3) Appellant's motion for modification of judgment.

(4) Appellant's motion to transfer cause to court en banc.

(5) Order or orders overruling each of the three (3) above mentioned motions.

(6) Opinion of the Supreme Court of the State of Missouri.

(7) Petition for writ of error and order allowing same.

(8) Assignment of errors.

(9) Supersedeas bond on writ of error.

(10) Citation on writ of error and acknowledgment of service.

(11) Original writ of error with your return thereto.

(12) Certificate of lodgment of copy of writ of error, for the use of the defendant in error, and lodgment of original supersedeas bond.

(13) Your certificate of authentication of the record.

F. W. LEHMANN,
JAMES C. JONES,
*Attorneys for Hartford Life Insurance Company, Defendant-Appellant.*

We, the undersigned, counsel for Rosa Barber, Plaintiff-Respondent, hereby acknowledge service of a copy of the foregoing præcipe for transcript this 29th day of July, 1919.

ROBERT KELLEY,
N. M. BRADLEY,
M. D. ABER,
CHAS. E. MORROW,
*Counsel for Rosa Barber, Plaintiff-Respondent.*

[Endorsed:] No. 21314. In the Supreme Court of Missouri. Rosa Barber, Plaintiff-Respondent, vs. Hartford Life Insurance Company, Defendant-Appellant. Præcipe for Transcript. Jones, Hocker, Sullivan & Angert, Attorneys at Law, Third National Bank Building, Saint Louis.

*Certificate of Lodgment.*

SUPREME COURT, STATE OF MISSOURI, *ss:*

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, do hereby certify that there was filed with me as such clerk on the 30th day of July, 1919, in the matter of Rosa Barber, defendant in error, vs. Hartford Life Insurance Company, plaintiff in error, the original writ of error which is attached to the transcript accompanying this certificate, together with a copy of such

writ of error lodged for the use of the defendant in error, Rosa Barber.

There was also filed with me the original supersedeas bond, a copy of which is contained in the transcript of record to which this certificate is attached.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at my office in the City of Jefferson, State aforesaid, this 5th day of August, 1919.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
*Clerk of the Supreme Court*
*of the State of Missouri.*

*Clerk's Certificate to Transcript.*

SUPREME COURT, STATE OF MISSOURI, *ss:*

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the foregoing is a full, true and complete transcript of the record, proceedings and orders in the case of Rosa Barber, respondent, vs. Hartford Life Insurance Company No. 21,314 and as called for by the Præcipe filed herein and made a part hereof as fully and completely as the same appear of record or on file in my office.

I do further certify that the original writ of error, together with my return thereto and the original citation with acknowledgment of service thereon are hereto attached and herewith returned.

In testimony whereof, I have hereto set my hand and affixed the seal of said Supreme Court at my office in the City of Jefferson, State aforesaid, this 5th day of August, 1919.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
*Clerk of the Supreme Court*
*of the State of Missouri.*

Endorsed on cover: File No. 27,251. Missouri Supreme Court. Term No. 496. Hartford Life Insurance Company, plaintiff in error, vs. Rosa Barber. Filed August 11th, 1919. File No. 27,251.

OCT 2 1919
JAMES D. MAHER,
CLERK.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

HARTFORD LIFE INSURANCE COMPANY,
Petitioner,
vs.
FLORA BARBER,
Respondent.
No. 406

## PETITION OF PETITION FOR WRIT OF CERTIORARI, PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF PETITION.

F. W. LEHMANN,
JAMES C. JONES,
GEO. F. BAID,
Attorneys for Petitioner.

Gibson Law Printing Co., Ninth and Walnut Sts. Salt, Mich. 1919.

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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

| | | |
|---|---|---|
| HARTFORD LIFE INSURANCE COMPANY, *Petitioner.* | | |
| vs. | | No. ———. |
| ROSA BARBER, *Respondent.* | | |

## NOTICE OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

*To Rosa Barber, Respondent, and Messrs. Charles E. Morrow, Robert Kelly and Nick M. Bradley, her Attorneys of Record:*

*TAKE NOTICE:* That on Monday, October 13, 1919, at the opening hour of the Supreme Court of the United States, or as soon thereafter as counsel can be heard, we will present to said Supreme Court, at Washington, D. C., a petition for a writ of *certiorari* in the above-entitled matter, to be directed

to the Supreme Court of the State of Missouri, a copy of which petition and the brief in support thereof is furnished you herewith.

Dated this 27th day of September, A. D. 1919.

F. W. LEHMANN,
JAMES C. JONES,
GEO. F. HAM,
*Counsel for Petitioner.*

Service of a copy of the above notice, together with a copy of the petition and the brief in support thereof, is hereby admitted, this 27th day of September, 1919.

.....,

.....,

.....,
*Counsel for Respondent.*

## AFFIDAVIT OF SERVICE.

State of Missouri, }
City of St. Louis. } ss.

Geo. F. Hain, of lawful age, being duly sworn, upon his oath, states that on this twenty-seventh day of September, 1919, at the City of St. Louis, Missouri, he served upon Mr. Charles E. Morrow personally three copies of the within notice, petition for writ of *certiorari* and brief in support of such petition in the matter of Hartford Life Insurance Company, Petitioner, v. Rosa Barber, Respondent, the said Mr. Charles E. Morrow being one of the attorneys of record for said Rosa Barber.

Geo. F. Hain.

Subscribed and sworn to before me, this 27th day of September, 1919.

My commission expires March 2, 1923.

(Seal)

Edward W. Lake,
*Notary Public within and for the City of St. Louis, Missouri.*

In the Supreme Court of the United States.

October Term, 1919.

Hartford Life Insurance Company,
Petitioner,

vs.

Rosa Barber,
Respondent.

No. .....

**Notice to Administrator of Petition for Writ of Certiorari to the Supreme Court of the State of Missouri.**

*To August C. Hilmer, Administrator of the Estate of Rosa Barber, deceased:*

*Take Notice*, That on Monday, October 13, 1919, at the opening hour of the Supreme Court of the United States, or as soon thereafter as counsel can be heard, we will present to said Supreme Court, at Washington, D. C., a petition for a writ of *certiorari* in the above-entitled matter, to be directed to the Supreme Court of the State of Missouri, a copy of which petition and the brief in support thereof is furnished you herewith.

Dated this 29th day of September, A. D. 1919.

F. W. Lehmann,
James C. Jones,
Geo. F. Haid,
*Counsel for Petitioner.*

Service of a copy of the above notice, together with a copy of the petition and the brief in support thereof is hereby admitted, this 29th day of September, A. D. 1919.

August C. Hilmer,
*Administrator of the Estate of Rosa Barber, Deceased.*

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

HARTFORD LIFE INSURANCE COMPANY,
*Petitioner.*

vs.

ROSA BARBER,
*Respondent.*

No. ———.

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

*To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Now comes your petitioner, Hartford Life Insurance Company, a corporation, and makes this its petition for a writ of *certiorari* to the Supreme Court of the State of Missouri, and in support thereof respectfully states:

This suit, which was begun by petition filed in the Circuit Court of Johnson County, State of Missouri,

on June 17, 1911, was one by the beneficiary named in a policy or certificate of membership issued by the petitioner herein to the insured, who was the husband of the respondent. The case came to this court upon writ of error sued out from a prior decision of the Supreme Court of Missouri, and the opinion of this Court is reported in 245 U. S. 146. The case involved the same kind of contract that was in issue before this Court in the case of Hartford Life Insurance Company v. Ibs, 237 U. S. 662. The defense here and there was that the policy had become forfeited by non-payment of an assessment due and payable under its terms. Here, as there, the beneficiary of the policy contended that the assessment was excessive and, therefore, void, except that upon the last trial of this case it was contended that the excessiveness arose by reason of the inclusion in the assessment of fifteen cents (15c) to cover a tax of two per cent (2%) to be paid to the State upon the amount of the assessment collected, under a statute of Missouri. The assessment was levied January 29, 1910, and was payable March 1, 1910. The insured died on June 5, 1910, without having paid anything on account of the policy or certificate of membership subsequent to December 6, 1909.

From a judgment in favor of respondent in the trial court on the second trial, an appeal was prosecuted by petitioner to the Supreme Court of Missouri, which

last named court was the highest court of the State in which a decision in the suit could be had and the judgment of which court in this case is final. The judgment of the Supreme Court of Missouri was rendered June 2, 1919, and the motion of petitioner for a rehearing was denied on July 9, 1919.

There was duly pleaded and offered in evidence at the trial an exemplified copy of the record of the Superior Court of New Haven County, Connecticut, in the case of Charles H. Dresser and others v. Hartford Life Insurance Company and others, to which cause the insured, Frank Barber, was a party by representation, the effect of the decree in which case was involved and passed upon by this court when this case was here before, and also by the decision of this court in the case of Hartford Life Insurance Company v. Ibs, 237 U. S. 662.

On the former writ of error in this case the record disclosed the inclusion in the assessment of the fifteen cents (15c) to cover the two per cent (2%) tax to be paid to the State of Missouri under the statutes of that State, and it was contended by the defendant in error before this court that the judgment sought to be reviewed on that writ of error should be affirmed because of the inclusion of said amount irrespective of the other questions involved, but this court nevertheless reversed said judgment for the reason stated that full faith and credit was not given to the Connecticut

record, but notwithstanding the fact that such question was in the record and was presented to this court, the trial court on the second trial held that the inclusion of such tax rendered the assessment void and, on appeal, the Supreme Court of Missouri affirmed such ruling.

The trial court also permitted the recovery of damages and attorney's fee for vexatious delay under the provisions of Section 7068 of the Revised Statutes of Missouri 1909, as amended by the Act of March 30, 1911 (Laws of Missouri, 1911, page 282), although there was absolutely no evidence in support thereof except the fact that petitioner had not paid the claim, and this in spite of the fact that petitioner had prevailed on every issue that had theretofore been presented, and the Supreme Court of Missouri affirmed such ruling.

Petitioner further states that the decision and judgment of the Supreme Court of the State of Missouri denied to it a title, right, privilege or immunity claimed under the Constitution of the United States, in the following particulars, to wit:

I.

The Court erred in holding that the inclusion of fifteen cents in the assessment or call No. 126 against the insured, Frank Barber, to cover the tax of two

per cent paid by appellant to the State of Missouri, under the provisions of Section 7099 of the Revised Statutes of Missouri 1909, rendered such assessment excessive and void, and that the non-payment of such assessment constituted no ground for the forfeiture of the insurance; that in so holding the Court has failed to give full faith and credit to the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser *et al.* v. Hartford Life Insurance Company *et al.* (an exemplified copy of the record and decree in which case was offered and received in evidence at the trial of this cause) contrary to and in violation of Article IV, Section 1 of the Constitution of the United States, in this (1) that said assessment or call 126 was adjudged to be valid and lawful by the Connecticut Court in the Dresser decree; (2) that under the Dresser decree, it was adjudged that an excess in an assessment, if any, should not vitiate or invalidate the assessment, but should simply render the succeeding assessment subject to credit for such excess; and (3) because it was held by the Court of Connecticut in the Dresser decree that the Mortuary Fund of the Safety Fund Division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime and the continuance of said certificates, whereas the trial court

and the Supreme Court of Missouri hold that the certificate in suit is payable out of the Mortuary Fund, notwithstanding the conceded and admitted fact that assessment or call 126 levied against the insured prior to his death was not paid when due.

II.

The Court erred in sustaining the action of the trial court in refusing to instruct the jury, as requested by the appellant (defendant) that upon the former writ of error in the Supreme Court of the United States in this case, the particular assessment or call in question No. 126, levied against the insured, Frank Barber, under the certificate or policy sued on herein was declared valid and legal, and by reason of such finding and holding of the Supreme Court of the United States the plaintiff was estopped from asserting the contrary.

III.

The Court erred in not holding that the question of the inclusion of the fifteen cents' tax, in assessment No. 126 levied against the insured, Frank Barber, was not properly before the trial court for the reason that all questions concerning that tax were necessarily before the Supreme Court of the United States upon the former writ of error in this case in that

court, and the decision on that writ of error became the law of the case, controlling upon the trial court on the second trial of said case and upon the Supreme Court of the State upon the appeal from such second trial.

## IV.

The Court erred in sustaining the action of the trial court in giving to the jury that portion of the instruction requested by the plaintiff which authorized the assessment against defendant of damages and attorney's fee (Rec., p. 390) for the reason that the statute of Missouri, Section 7068, Revised Statutes of Missouri 1909, as amended by the Act of March 30, 1911 (Laws of Missouri for 1911, page 282) is unconstitutional and void because the same is in violation of Section 10, Article I of the Constitution of the United States and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and because the construction thereof by the courts of Missouri in this case constitutes a rule of judicial construction violative of said provisions of the Constitution of the United States, and because the application of said statute to the facts of this case denies to the defendant due process of law as guaranteed to it by the Constitution of the United States.

V.

The Court erred in sustaining the action of the trial court in submitting to the jury the question of the imposition against appellant (defendant) of damages and attorney's fees as for vexatious delay; that Section 7068 of the Revised Statutes of Missouri 1909, as amended by the Act of March 30, 1911 (Laws of Missouri for 1911, page 282) as construed by the trial court to apply to the facts of this case, is unconstitutional and void, because the statute, as so construed deprives the defendant of its property without due process of law, and as so construed the statute aforesaid is repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and, therefore, unconstitutional and void.

Your petitioner further states that on the 28th day of July, 1919, a writ of error was allowed to your petitioner by the Supreme Court of the State of Missouri, and that the certified transcript of record upon such writ of error is now on file in this court, No. 496, October Term, 1919.

Petitioner further states that it is advised and believes that some of the questions involved are of such character as to necessitate the prosecution of a writ of error under the first paragraph of Section 237 of the Judicial Code, as amended, while the other

questions are subject to review only upon a writ of *certiorari* under the second paragraph of the provisions of said Section 237 of the Judicial Code.

Your petitioner prays that the certified transcript upon the writ of error now pending in this court in which your petitioner is the plaintiff in error, and Rosa Barber is the defendant in error, may be considered in connection with this petition as if made a part thereof without being required to have a separate certified transcript of the record in the Supreme Court of the State of Missouri certified and filed with this petition.

Wherefore, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Honorable Court to the Supreme Court of the State of Missouri requiring and directing the said Supreme Court of the State of Missouri by a date certain to be designated therein, to certify and send to this Honorable Court a full, true and complete transcript of the record and proceedings in the case of Rosa Barber, plaintiff and respondent, v. Hartford Life Insurance Company, defendant and appellant, said cause being number 21,314 upon the docket of said Supreme Court of the State of Missouri, to the end that the said cause may be reviewed and determined by this Honorable Court, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may

seem appropriate and in conformity with law, and that the said judgment of the said Supreme Court of the State of Missouri in the said case may be reversed by this Honorable Court.

And your petitioner will forever pray.

HARTFORD LIFE INSURANCE COMPANY,
*Petitioner.*

By F. W. LEHMANN,
JAMES C. JONES,
GEO. F. HAID,
*Counsel for Petitioner.*

State of Missouri, } ss
City of St. Louis. }

George F. Haid, being duly sworn, upon his oath says that he is one of the counsel for the Hartford Life Insurance Company, the petitioner in the foregoing petition for a writ of *certiorari;* that he prepared the foregoing petition, and the allegations contained therein are true as he verily believes.

GEORGE F. HAID.

Subscribed and sworn to before me by the said George F. Haid, this 27th day of September, A. D. 1919.

My commission expires March 2, 1923.

EDWARD W. LAKE,
(Seal) *Notary Public within and for the City of St. Louis, Mo.*

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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## STATEMENT OF CASE.

As stated in the petition, this case has heretofore been before this Court upon a writ of error to the Supreme Court of Missouri. The opinion of this Court is reported in 245 U. S. at page 146.

The suit is based upon the same kind of a policy against the same company as the policy involved in the case of Hartford Life Insurance Company v. Iba, 237 U. S. 662.

The defense in this case, as in the Iba case, was that the policy had become forfeited by the non-payment of an assessment due and payable under its terms.

The certificate of membership or policy was of the assessment type, and provided that the quarter days

for the payment of mortality calls "shall be the first day of March, June, September and December in each year" (Rec., p. 434).

On January 29th, 1910, the company levied an assessment against the insured, payable March 1, 1910, covering mortality call and quarterly dues.

The certificate of membership or policy of insurance also provides, among other things, that (Rec., p. 433):

> "3. The member further agrees and accepts this certificate upon the express condition that if either the annual dues, mortality calls, or safety fund deposit, as hereinbefore required, are not paid to said company on the day due, then this certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the certificate was in force, either from said company or the trustee of the safety fund."

As to the dues the certificate provided that the member agrees to pay the company for expenses, dues of three dollars per annum on each $1,000 indemnity, or by *pro rata* installments of the same, in advance, for periods of less than a year (Rec., p. 432).

Neither the mortality call nor the dues covered by

the levy of January 29, 1910, were paid, and the insured made no payments whatever between December 6, 1909, and the date of his death on June 5, 1910.

The assessment or mortality call included fifteen cents to cover a tax of two per cent on the total amount of the mortality call and dues to provide for a tax of that amount demanded by the Insurance Department of Missouri, under the provisions of a statute of the State.

Section 7069 of the Revised Statutes of Missouri 1909 is as follows:

> "Every insurance company or association **not organized under the laws of this State** shall * * * annually pay a tax upon the premiums received * * * in this State * * * for insurance of life * * * at a rate of two per cent per annum in lieu of all other taxes, * * *, which amount of taxes shall be assessed and collected as hereinafter provided."

Subsequent sections of the statute empower the Superintendent of the Insurance Department to make the assessment and enforce collection thereof.

The certificate of membership further provides that (Rec., p. 433):

> "If the laws of any country, state, county or

municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax."

The record shows (Rec., pp. 141, 261) that the State of Missouri exacted and the company regularly paid to the State a tax on the assessments collected from its members in Missouri, and that a similar tax had been included in every assessment or call against the insured, Frank Barber, from March 1, 1894, to December 1, 1909 (Rec., p. 379).

Upon the former writ of error No. 253, October Term, 1916, the record showed (page 128) that the assessment in question included the fifteen cents tax payable to the State of Missouri, and that similar taxes had been collected and paid to the State in previous years (former Rec., p. 243), and the record now here shows exactly the same facts and also that the assessment in question was made and levied in the same manner as the previous calls (present Rec., p. 344) and that a similar tax was included in each assessment upon the certificate in suit since March 1, 1894 (present Rec., p. 379).

Upon the former writ of error the defendant in error contended both in the brief and printed argument (pages 11 and 24 of brief of defendant in error on former writ of error) that the inclusion of this tax rendered the assessment void, and it was urged that

this necessitated an affirmance of the judgment complained of, but notwithstanding these facts this court reversed the former judgment of the Supreme Court of Missouri.

After the case was remanded the defendant in error, at the second trial, urged the same question upon the trial court. The plaintiff in error in the trial court requested each of the instructions numbered XIV to XVIII (Rec., pp. 401-405), all of which were refused over the exception of defendant in error. Those instructions read as follows:

"XIV.

The Court instructs the jury that it is specifically provided by the certificate or policy in suit that if the laws of any state shall require a tax to be paid by the defendant on account of mortality calls or assessments payable by the holders of such certificates, such mortality calls or assessments to be levied by the defendant under such certificates shall be computed so as to cover and include such tax; that it is specifically provided by Section 8043, R. S. Mo. 1899, in force at and prior to the levy of said assessment or call 126 against the said Frank Barber under the policy or certificate in suit, that every insurance company or association not organized under the laws of the State of Missouri shall pay annually a tax upon the premiums received for insurance of life in the said State of Missouri; that the defendant company, in compliance and

in accordance with the laws of the State of Missouri, filed with the Insurance Department of the State of Missouri annual reports for the years ending December 31, 1909, and December 31, 1910; that said reports so filed by the defendant company with the Insurance Department contained the amount of mortality calls or assessments collected by the defendant company on certificates in its Safety Fund Department held by citizens of this State, for the years ending December 31, 1909, and December 31, 1910, respectively; that after the filing of said reports as aforesaid, the Insurance Department of the State of Missouri computed and ascertained from said reports the amount of the tax payable by the defendant company on premiums or assessments collected by it from holders of certificates in the Safety Fund Department residing in the State of Missouri; that it appears from the undisputed evidence that in computing said tax the said Insurance Department included and assessed the defendant upon all assessments or mortality calls collected by it under certificates held by persons in the State of Missouri and demanded of the defendant the payment of tax computed and based upon all of the assessments paid to defendant under the certificates held by persons in the State of Missouri, which said tax, so computed by the Insurance Department as aforesaid, was paid by the defendant; and under the circumstances, the Court instructs you that you cannot find from the evidence that the assessment or call 126 levied against the insured un-

der the certificate sued on herein was illegal and void because it included two per cent of the amount of said assessment as a tax to the State of Missouri on account of such assessment."

"XV.

The Court instructs the jury that they cannot find in this case that the assessment or Mortality Call No. 126 levied against the insured, Frank Barber, was illegal or void because of the fact that two per cent of the amount of said assessment was demanded of the said Frank Barber by defendant as a tax payable to the State of Missouri on account of such assessment."

"XVI.

The Court instructs the jury that the defendant herein was merely acting as trustee for the said Frank Barber and all other certificate holders in the Safety Fund Department of the defendant company in the levy and calculation of assessments under the certificate in suit and all other certificates issued in the Safety Fund Department of the defendant company; that in the exercise of the powers and duties imposed upon the defendant as such trustee the defendant is only obligated to exercise that care and prudence which an ordinarily prudent person would exercise under the same or similar circumstances, and that the defendant as such trustee is not liable to the holders of such certificates for mere errors of judgment in the computation and levy of such

assessments; that it is specifically provided in the certificate or policy in suit that if the laws of any state shall require a tax to be paid by the defendant on the mortality calls or assessments payable under such certificate, such mortality calls or assessments shall be determined so as to cover and include the amount of such tax; that it is provided by Section 8043, R. S. Mo. 1899, in force at and prior to the time of the levy of the assessment or Call 126 under the policy in suit, that every insurance company or association not organized under the laws of the State of Missouri shall pay annually a tax upon the premiums received for insurance of life in the State of Missouri; that the action of the defendant in including in said assessment or Mortality Call 126, two per cent of the amount thereof as a tax due the State of Missouri was a mere error of judgment on the part of the defendant and the Court therefore instructs you that you cannot find that said assessment or Mortality Call 126 levied against the said Frank Barber was illegal or void because it was computed so as to include two per cent of the amount of said assessment as a tax due the State of Missouri on said assessment".

"XVII.

The Court instructs the jury that it was adjudged by the Supreme Court of the United States on the former appeal of this cause that assessment or Call 126 levied by the defendant against the said Frank Barber under the certificate or policy sued on herein, was valid and legal, and

that the plaintiff is now estopped by reason of such finding and holding by the Supreme Court of the United States in this cause from asserting that said assessment or call is illegal, excessive or void."

"XVIII.

The Court instructs the jury that the plaintiff is estopped by the decision and judgment of the Supreme Court of the United States on the former appeal of this case from asserting that assessment or Call No. 126, levied against the said Frank Barber by the defendant under the certificate sued on herein, was illegal or void because of the fact that two per cent of the amount of said assessment was demanded of the said Frank Barber by the defendant as a tax payable to the State of Missouri on account of such assessment".

Although the judgment now sought to be reviewed was the result of the second trial of the case, and notwithstanding that the judgment against the petitioner at the first trial had been reversed, and, in the absence of any evidence that petitioner had "vexatiously refused to pay" except the mere fact that it had not paid the amount of the policy to the respondent, the trial Court, over the exception of petitioner gave the following instruction requested by respondent (Rec., p. 390):

"And the Court further instructs the jury that if you find and believe from the evidence that

the defendant, before the institution of this suit, refused to pay plaintiff the amount of the policy sued upon, and shall further find and believe from all the facts and circumstances shown by the evidence that its refusal to pay was vexatious, that is, without reasonable cause, then you may also allow her in addition to the amount of the policy sued upon and interest thereon, a sum not exceeding 10 per cent of the amount of the policy sued upon, together with a reasonable attorney's fee, said attorney's fee not to exceed the sum of $750.00, and should return a verdict for the aggregate sum".

And refused to give the following instructions requested by petitioner (Rec., p. 408):

"XXIII.

The Court instructs the jury that the plaintiff is not entitled to recover against the defendant anything by way of damages and attorney's fees."

"XXIV.

The Court instructs the jury that there is no evidence in this case that the refusal of the defendant to pay the plaintiff the amount claimed by her under the policy in suit is or was vexatious, and that the plaintiff is not entitled to recover damages or attorneys' fees against the defendant."

"XXV.

The Court instructs the jury that the undisputed and uncontradicted evidence in this case establishes that the refusal of the defendant to pay to the plaintiff the amount claimed by plaintiff under the policy in suit was made in good faith and was not vexatious and that the plaintiff is not entitled to recover damages or attorneys' fees against the defendant."

"XXVI.

The Court instructs the jury that Section 7068, Revised Statutes of Missouri for 1909, and the Act of March 30, 1911, Laws of Missouri for 1911, p. 282, in amendment thereof, if held or construed as authorizing a recovery by plaintiff of damages and attorneys' fees against the defendant herein, are unconstitutional and void and deprive the defendant of its property without due process of law and deny to defendant the equal protection of the law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the reason that there is no evidence in this case that the refusal of the defendant to pay the plaintiff the amount claimed by her under the policy in suit is or was vexatious."

# ARGUMENT.

## The Decision of the Supreme Court of Missouri Is at Variance with the Law of the Case as Established by the Decision of This Court on the Prior Writ of Error.

Before proceeding to a discussion of the question involved in the above headline, we desire to present a few observations concerning the decision sought to have reviewed.

This Court in its opinion on the former writ of error (245 U. S., *l. c.* 150) characterized the basis of the decision of the Supreme Court of Missouri as a "make-weight". We cannot help but feel that if such statement was justifiable as to the former decision of the Supreme Court of Missouri, it most certainly is applicable to the decision now sought to have reviewed.

The decision is based wholly upon the ground that petitioner included in the assessment the sum of 15 cents to cover a tax of 2 per cent, which the State of Missouri was demanding of it and which petitioner had been paying for many years. The decision of the Supreme Court of Missouri, which held that the tax

did not apply to assessments, was rendered more than six years after the assessment in question was levied, and that decision was by a divided court, four to two, so that the question of the application of the statute to assessments was not sufficiently free from doubt to call forth a unanimous decision from the Supreme Court of that State.

No claim is made that petitioner was acting in bad faith in including the 15 cents in the assessment. It is to be remembered that the insured was one only of 11,000 members. The defendant was acting for those members. It was the representative of the insured in dealing with his co-members. What it deemed a proper charge against him it also charged to the other 10,999 members who were in the same class as the insured; so that whatever the defendant did as to the insured in representing the 10,999 members, it also did as to the 10,999 members in representing the insured. Therefore, the consequences of its acts were the same as to all, and really constituted the act of the members themselves. There can be no question that if a particular member is imposed upon by charging him a greater proportion than his share under the contract, he should have a remedy against his co-members. But that is not this case. The record here shows that every member was assessed his proportionate share of the death losses, plus the tax which the State exacted upon his assessment. Neither

the defendant nor the co-members of the insured profited by the assessment of such tax, because, as the record shows, the whole amount thereof was paid to the State which exacted the tax.

Petitioner was also justified in assuming that it was liable for the tax, even if assessments levied by companies licensed to do business in the State were not so liable for the following reasons:

Petitioner was organized and doing business under the laws of Connecticut.

Section 7059 of the Revised Statutes of Missouri 1909 (quoted at page 15 hereof) required every insurance company or association not organized under the laws of Missouri to pay a tax of 2 per cent on the premiums collected in the State.

Section 6954 of the Revised Statutes of Missouri 1909 (Article III, relating to insurance on the assessment plan), provides:

> "Corporations organized or doing the business of life insurance **under this article** shall provide for the accumulation of an emergency fund which shall not be less than the proceeds of one death assessment on all policy or certificate-holders thereof; * * * said fund shall be accumulated by existing corporations within six months from the date of accepting the provisions of this article; * * * which fund, together with the income thereon, shall be a trust fund for the payment of death claims or other benefits provided

for in their policies or certificates, and shall be invested in securities in which insurance companies are allowed by law to invest their capital. These securities shall be deposited in trust with the Superintendent of the Insurance Department of the State. * * * If, in any period of six months the death rate of any such corporation shall be in excess of the annual rate of mortality as shown by the American Life tables, it shall be lawful for such corporation to draw out any portion of said securities necessary to meet such excess."

There is no evidence whatever that the defendant ever accepted the provisions of Article III, or that it ever received or sought a license to do business in Missouri upon the assessment plan, and, in fact, it never did qualify under the above article. Indeed, it could not have done so under the provisions of the certificates of membership issued to its members.

In the first place, the evidence shows (Rec., p. 77) that in 1867 the defendant began writing legal reserve insurance, and so continued until the end of 1879; in the early part of 1880 it began to write the safety fund business, such as the certificate in suit; the latter business it continued to write until 1899, and it then resumed the writing of legal reserve insurance to the exclusion of safety fund insurance, and so continued until 1913; but during all of the period from 1879 to 1913 it had in force legal reserve contracts,

some issued prior to 1879, and others issued subsequent to 1899 (Rec., pp. 225, 268), consequently, the corporation defendant was not one organized and subject to the provisions of Article III, Chapter 61, of the Revised Statutes of Missouri 1909.

In the second place, the company did not and could not accumulate the emergency fund required by the Missouri assessment article. The certificate issued to the insured, as well as all other certificates issued by the company, provided for the payment of ten dollars on each one thousand dollars of insurance, to create a safety fund, which the certificate provided should be deposited with the trustee of that fund for the specific purposes set forth in the certificate of policy.

The certificate also provided for the payment by the member "of all mortality calls proportioned to the indemnity herein provided for, levied against the herein-named member **to form a mortuary fund for payment of all indemnity matured by deaths of members.**

The Company, therefore, was limited in the application of any money which came into its hands by the contract aforesaid, between it and the insured. It was powerless to accumulate any fund other than the Mortuary Fund, and the amount of this Mortuary Fund was limited by the terms of the Connecticut decree in the Dresser suit (Ibs case, 237 U. S., *l. c.* 668) to a quarterly assessment equal to the average

of the four preceding quarterly assessments, and, by the terms of the certificate, said fund was to be "in no wise chargeable or liable for any use or purposes other than for the settlement of death claims." The record shows (Rec., p. 134) that the average monthly death losses in 1909, the year immediately preceding the assessment in question, exceeded one hundred thousand dollars per month. The record also discloses that the average amount of the four preceding quarterly assessments was about three hundred thousand dollars, so that the latter sum was the extreme limit that the Company might accumulate in that fund. It was impossible, therefore, for the Company to invest any of its funds in securities as required by the assessment laws and replenish this fund whenever its losses exceeded the designated Mortality Table, for the reason that its death losses were in excess of one hundred thousand dollars per month, and it was necessary to constantly resort to the Mortuary Fund for the purpose of making prompt payment of death claims between assessment periods (which the contract provided should be made quarterly) in order to preserve the integrity of the plan of insurance, and there is no warrant in the contract for the accumulation and investment of a fund other than the Safety Fund, which is in the hands of another company as trustee.

This Missouri assessment law was undoubtedly de-

signed for **mutual** assessment companies with the thought that its requirements could be complied with by **legislation** by the **legislative and representative** body, which is a prominent feature of **mutual assessment concerns** rendering their **schemes of insurance** subject to **organic legislative modification.** No such thing here. The defendant had, and has, outstanding contractual obligations as unalterable as the laws of the Medes and Persians. It simply could not conform to our assessment article.

It was the law in Missouri that a foreign corporation doing a life insurance business in Missouri was not entitled to the benefits and exemptions of article III relating to insurance on the assessment plan unless such corporation secured a license under the provisions of the act, and that to operate without such license would subject the corporation to the general insurance laws of the State. Thus, in Schmidt v. Foresters, 228 Mo., *l. c.* 700, the Court says:

> "It (the insurance company) cannot claim the benefits of the law merely because its contracts are of the character mentioned in the law, but to claim the exemption given it must come in under the law, **and make its contracts under the law.** If it does that, then the law is read into and becomes a part of the contract, **but until it does do that the general law is and must be read into each and every one of its contracts** made with a citizen of Missouri."

So that not only did the company act in good faith when it included the fifteen cents' tax in the assessment, but it was justified in doing so both because the Insurance Department was demanding the payment under circumstances apparently justifying the action, and the decisions seemed to make the company liable because of the absence of a license.

But, be that as it may, the effect of the inclusion of this tax in the assessment was presented to this court on the former writ of error, and it was claimed by the respondent at that time that, irrespective of the other questions involved, the inclusion of the tax rendered the assessment void and necessitated an affirmance of the judgment then before the court. Consequently, under the decisions cited by defendant in error (brief on former writ of error, p. 25), if the contention was correct, the Court could not have properly reversed the judgment.

The concrete question before this Court on the former writ of error was whether or not the particular assessment which included the fifteen cents' tax, was authorized by the Connecticut decree in the Dresser case. Necessarily involved in that inquiry was the question whether or not the fifteen cents included therein was payable. This Court answered the inquiry in the affirmative. This Court could not have held that this assessment was authorized by the Connecticut decree and at the same time hold that

it was void because it included the fifteen cents' tax. The Court said (245 U. S., *l. c.* 149):

> "It is obvious from the evidence that this assessment was levied in the usual way adopted by the company and **tacitly sanctioned by the Connecticut judgment.**"

It is true that the opinion of this Court on the former writ of error does not discuss the question of the inclusion of the tax, but the question was in the record, was necessarily involved, and was presented to this Court. If that tax rendered the assessment void then, of course, the other questions were of no moment and the judgment attacked must, of necessity, have been affirmed. The important question presented at that time, as here, was as to the validity of the assessment. If the assessment was void for any reason, the matter was at an end, and the result must have been an affirmance of the former judgment.

It necessarily follows that the trial court should have ruled that the question of the validity of the assessment, because of the inclusion of the fifteen cents' tax, had been adjudicated, and it should have given the instructions requested by petitioner.

Questions of the character here involved have been the subject of consideration by this Court many times.

For instance: In Gould v. Evansville, Etc. R. R., 91 U. S., *l. c.* 532, the Court says:

> "Where the parties and the cause of action are the same, the *prima facie* presumption is that the questions presented for decision were the same, unless it appears that the merits of the controversy were not involved in the issue; the rule in such a case being, that where every objection urged in the second suit was open to the party, within the legitimate scope of the pleadings, in the first suit, and might have been presented in that trial, the matter must be considered as having passed *in rem judicatam*, and the former judgment in such a case is conclusive between the parties."

The case of United States Trust Company v. New Mexico, 183 U. S. 535, involved an action for the foreclosure of a mortgage given by a railroad. The Territory of New Mexico filed an intervening petition claiming a lien for and payment by the receiver of certain taxes. The lower court ordered the intervening petition dismissed on the ground that the "matters and things therein set up" were "not sufficient to entitle the said intervening petitioner to the relief sought by its petition", which ruling upon appeal to the Supreme Court of the United States was reversed and the cause remanded for further proceedings.

After remand, a decree was finally entered in favor

of the Territory for a less amount than it claimed, and both parties appealed.

On the second appeal the Supreme Court said (page 539):

> "The District Court dismissed the intervening petition on the ground that it presented no claim against the property or the parties. The reversal by this court of such an order is an adjudication that upon the face of the petition a valid claim was presented, and is conclusive of such *prima facie* validity, **not merely against objections which were in fact made, but also against those which might have been made.**" (Citing cases.)

The case of Chaffin v. Taylor, 116 U. S. 567, was an action in trespass *de bonis asportatis*. The defendant justified the taking as Treasurer of Henrico County, Virginia, charged with the duty of collecting taxes due the State, which on demand the plaintiff had refused to pay. To this plea the plaintiff replied that he tendered payment of amount due in coupons cut from bonds of the State receivable in payment of taxes, by virtue of an act passed March 30, 1871.

To this reply defendant demurred that by the act of January 26, 1882, he was forbidden to receive coupons in payment of taxes, and that by Act of March 13, 1884, an action for trespass did not lie. On this demurrer judgment was rendered for defendant, which was reversed by this Court on the ground

that the statutes referred to were unconstitutional as impairing the obligation of the contract entered into by the State with the holders of the bonds, and the cause was remanded with directions to proceed therein in conformity with the law and the opinion of the Supreme Court.

The trial Court then permitted defendant to file a rejoinder to the reply, setting up an act of January 24, 1882, under which the collector was permitted to receive such coupons only for identification and verification, and alleging that plaintiff was unwilling to conform to said last-mentioned act. To this rejoinder a demurrer was filed and on such demurrer judgment was entered for defendant, the trial court being of the opinion that because the act of January 24, 1882, was not before the Supreme Court, the question was open for its decision. On writ of error from this latter judgment this Court, referring to its former decision, said:

> "It was there decided that the taxpayer had a contract right to pay his taxes in coupons, that a tender of them for that purpose, as to subsequent steps to collect the tax as delinquent, was equivalent to payment, and that a seizure of property under a levy thereafter for their non-payment was a trespass, notwithstanding any act of the General Assembly to the contrary, for such an act, being in breach of the obligation of the contract

of the State, is unconstitutional, and therefore null and void.

"The rejoinder of the defendant allowed to be filed after the judgment of reversal, therefore, **sought again to draw in question the very matter which had been already finally adjudged by this Court in the same case.** It did not deny the genuineness of the coupons tendered, nor the fact of tender, and the question of law broadly decided on the demurrer to the replication necessarily involved **every defense,** arising as matter of law, **that could be made** upon any existing acts of the General Assembly of Virginia, for the whole law of the case, as to the plaintiff's legal right to recover on his cause of action, was presented by the pleadings, **and was concluded by the judgment of reversal.**

"As was said in Clark v. Keith, 106 U. S. 464, 'that question is no longer open in this case, for the reason that it has long been settled that whatever has been decided here on one writ of error cannot be re-examined on a subsequent writ brought in the same suit. This rule was distinctly stated in Supervisors v. Kennicott, 94 U. S. 498, where numerous authorities are cited, beginning as early as Himely v. Rose, 5 Cranch, 313."

In an early case (Tyler v. Magwire, 17 Wall., *l. c.* 283), this Court said:

"Brought here as the cause is by a second writ of error, it is settled law in this Court that nothing is brought up for re-examination and revision

except the proceedings of the subordinate court subsequent to the mandate. It has been settled, says Mr. Justice Grier, by the decisions of this Court, that after a case has been brought here and decided and a mandate issued to the court below, if a second writ of error is sued out it brings up for revision nothing but the proceedings subsequent to the mandate. **None of the questions which were before the Court** on the first writ of error can be reheard or examined upon the second, as it would lead to endless litigation".

The same rule is announced by many of the appellate courts of the country, some of which we will now refer to. In the case of Pitkin v. Shacklett, 117 Mo. 548, the validity of certain taxes was raised after the case had been remanded to the trial court. The opinion of the Court upon the second appeal from the action of the trial court in overruling the objection to the allowance of such taxes, is as follows:

"MacFarlane, J.—This is a second appeal in this case. The opinion of the former appeal is reported in the 106 Mo., on page 574. The judgment was then reversed and the cause remanded with directions to the Circuit Court to enter judgment in favor of plaintiffs for the **proper proportion of the amount paid by the** purchaser at tax sale for the whole tract, subsequent taxes paid by plaintiff or the purchaser with penalties and interest as provided by section 219, page 1206, 2

Wagner's Statutes. The amount for which the land was sold at tax sale, and the amount of subsequent taxes paid, with dates of payment, appeared in the record. The mandate simply requires a calculation of the penalties and interest, required by the statute to be paid, and the proportion thereof chargeable to this land. The Court seems to have literally followed the mandate.

"On the trial the defendant made objections to the allowance of the amount of taxes, paid subsequent to the tax sale, on the ground of some irregularity in the assessment and levy. The Court overruled the objection for the reason that, under the mandate of the Court, these matters were not open to further inquiry. In this the Court did not err. **On the former trial the validity of the taxes was not questioned, and their legality was adjudicated under the judgment of this Court**, and the question could not be reopened (Stump v. Hornback, 109 Mo. 277; Hickman v. Link, 116 Mo. 123, and cases cited). Judgment affirmed. All the judges concur."

In Hill v. Draper, 37 S. W. (Ark.) 574, the Supreme Court had passed upon a conveyance of partnership property to a creditor of one of the partners setting aside the sale to the creditor and remanding the case for further proceedings consistent with its opinion. The trial court thereafter permitted defendants to amend their answer and then upon evidence as to facts which were known to defendants

before and at the time the cause was first heard, it was held that plaintiffs were estopped to complain of the sale, and dismissed the complaint. The Court, quoting from a prior decision, says:

> "It results from the nature and supremacy of this Court that no inferior tribunal can review, alter, or modify its judgments or decrees, for any supposed error, **or for any matter which might have** been considered here."

and accordingly reversed the decree of the trial court.

In the case of Castleman v. Buckner (Ky.), 202 S. W. 681, an appeal had been prosecuted from a ruling upon exceptions to a sale. On the second appeal exceptions were urged because the provisions of the code under which the sale was ordered were not complied with. The Court said, referring to the former appeal:

> "No other question was determined and, under the well-recognized rule of practice prevailing in this State, all other questions which were raised, **or could have been raised,** are now *res adjudicata.* • • •
>
> "Under the *res adjudicata* rule referred to, the appellant's exceptions cannot be considered on this appeal, even if they possessed merit, which we do not find to be the fact."

In Illinois Life Insurance Co. v. Wortham, 119 S. W. 802, the Court says:

> "Several questions are raised by counsel for appellant in brief upon this appeal, which under a long line of authorities cannot now be considered for the reason that they were settled on the former appeal. **Even though these questions were not made where they were such as should or might have been made, and were before the Court, they will be regarded as having been passed on.** This rule has been invariably adhered to in all cases where the opinion does not expressly state that a particular point is not passed upon."

See, also, Clark v. Brown, 119 Fed. 130.

The exact question determined by the Supreme Court of the United States in Hartford Life Insurance Company v. Barber, 245 U. S. 148, was that call No. 126, upon which the insured defaulted, was authorized by the Connecticut decree, was a valid call and properly payable to the insured. This ruling precluded subsequent contrary contention, as Mr. Justice Brewer said in Trust Company v. New Mexico, 183 U. S. 535:

> "Not merely against objections which were in fact made, but also against those which might have been made."

In Hastings v. Hennessey, 70 Mo. App. 354, the

Court reversed the trial court, which held that a bond given in a prior suit was a statutory bond only as to costs, and that as to all other undertakings it was a common-law bond and void for want of consideration. On a retrial the defendants undertook to inject into the case a defense that the complaint in the unlawful detainer suit was fatally defective, whereby the judgment therein was a nullity, etc. The Circuit Court, however, entered judgment on the bond, and, in affirming the latter decision, the Court says:

> "The judgment in this case must be affirmed. The matters now urged must be held to be *res adjudicata*. The entire record was before us on the first appeal, and the special matters now urged to defeat the liability of the defendants on the bond were presented by that record and were open to dispute and presumptively they were considered by the Court in making its disposition of the case. There would be no end to litigation if this were not the rule (Bevis v. R. R., 30 Mo. App. 564; Bank v. Taylor, 62 Mo. 338)."

In the case of Wellsville Oil Co. v. Miller, 150 Pac. 186, 189, the Supreme Court of Oklahoma, quoting from one of its prior decisions, says:

> "All questions open to dispute, and either expressly or by necessary implication decided on appeal to this court will not be opened for review on second appeal but such decision becomes the

> settled law of the case as to all such questions, and is not subject to re-examination."

This case on appeal to the United States Supreme Court was *affirmed*, 243 U. S. 6.

*In re* Cook's Estate, 143 Ia. 723, 122 N. W. 578, after a remand of the case to the trial court, a statute of Nebraska was for the first time pleaded as defeating the recovery, but which statute had not been pleaded on the former appeal. The Court said:

> "That the former opinion was *res adjudicata*, not only as to all matters which were pleaded, but as to all matters necessarily involved and which might have been pleaded, is fundamental."

In Perrault v. Emporium Department Store Co., 83 Wash. 578, 145 Pac. 438, the Court says:

> "This Court has often said that it will not entertain appeals piecemeal. In an unbroken line of decisions we have consistently held that questions determined on appeal, or which might have been determined had they been presented, will not be considered upon a second appeal of the same action. As to such questions the first appeal conclusively settles the law of the case" (citing many authorities).

In Nashville, C. & St. L. Ry. Co. v. Banks, 168 Kentucky 579, 182 S. W. 660, the Court, after stating that the particular matters relied upon were not

grounds of reversal on the first appeal, but were presented to the Court on that appeal, says:

> "The rule long since established in this Court is that where the first opinion does not contain any notice of errors relied on for reversal by the appellant, if these same errors appear upon the second appeal and are relied on for reversal, they will be considered as having been decided adversely to the contention of the appellant upon the first appeal."

We respectfully submit that it was error to hold that the inclusion of the 15 cents rendered the assessment void, because such ruling was contrary to the law of the case as established by this Court on the prior writ of error.

## The Supreme Court of Missouri, in Violation of Article IV, Section 1, of the Constitution of the United States, Refused to Give Full Faith and Credit to the Decree of the Connecticut Court in the Dresser Case.

The judgment of the Supreme Court of Missouri is violative of the provisions of Article IV, Section 1, of the Constitution of the United States in that it fails to give full faith and credit to the decree of the Connecticut Court in the Dresser case, because,

1. An assessment levied as was call No. 126, was

adjudged to be valid and lawful by the Connecticut Court in the Dresser case;

2. Under the Dresser decree it was adjudged that an excess in an assessment, if any, should not vitiate or invalidate the assessment, but should simply render the succeeding assessment subject to credit for such excess; and

3. It was held by the Connecticut Court in the Dresser case that the Mortuary Fund of the Safety Fund Division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime, and the continuance of said certificates, whereas the trial court and the Supreme Court of Missouri held that the certificate in suit is payable out of the Mortuary Fund, notwithstanding the conceded and admitted fact that assessment or call No. 126 levied against the insured prior to his death was not paid.

We will discuss the foregoing propositions in the order above stated.

1. The Dresser case in the Connecticut Court involved all assessments levied previous to the institution of that suit on October 19, 1906. It was brought by twenty-nine members residing in fifteen states (one of whom was W. O. Oldham, of Springfield, Missouri) for "the benefit of themselves and all others similarly situated", and it was held by this court that the de-

cree in that case was "binding upon all other certificate-holders" (Hartford Life Ins. Co. v. Ibs, 237 U. S., *l. c.* 672).

The record in the present case shows that every assessment levied against the members in Missouri from March 1, 1894, to December 1, 1909, had included in it the two per cent tax to be paid to the State (Rec., pp. 141, 261, 379).

The suit involved the validity of every assessment made, it being claimed that the company was "levying assessments unnecessary in amount and number", but the Connecticut decree found that

> "The Hartford Life Insurance Company did not levy assessments **unnecessary in amount** or number" (Rec., p. 22s), and
> "The Hartford Life Insurance Company levied the assessments **provided for in the plan and in the certificate above set forth**" (Rec., p. 22s).

The Connecticut court, therefore, passed upon the validity of the assessments which included such tax, and to now hold that the inclusion of the tax vitiated the assessment against the insured, fails to give effect to a decree binding upon all the parties, because if the inclusion of the tax rendered call 126 void, every prior assessment was unnecessary in amount to the extent of the tax, and consequently void. It was clearly impossible for the prior assessments to be valid and not be unnecessary in amount if there was

included in them any item that would destroy their validity.

2. The Dresser decree, as held by this court on the former writ of error (245 U. S., *l. c.* 150), contemplated a possible excess in assessments, because as said by this court, the assessment "necessarily was levied as an estimate". All of the circumstances involved in the plan of insurance demonstrates the correctness of this conclusion.

The company was a mere trustee acting for the insured and his co-members. It was his representative as well as the representative of his co-members. It was exacting from him the same contribution that was being required of his co-members. If the insured saw fit to terminate his membership, neither his co-members nor the company could prevent such action nor enforce payment of the demand, because his contract provided "that failure to make the stipulated payments **shall absolutely terminate** the member's liability therefor". The insured, on the other hand, had the right, after payment of any excess, to insist upon a credit of such excess upon the next succeeding assessment. The termination by the insured of his contract was of no advantage to the company, but a distinct loss, because the company was deprived of its remuneration of $3.00 per thousand of insurance per year, and yet it had no recourse against him.

The plan, as interpreted by the courts, was undoubt-

edly designed to prevent the very kind of injustice that must follow from a decision such as is here sought to have reviewed. The plan contemplates that all of the members shall be treated alike. It was not designed to mulct the members who performed their agreements in favor of those who failed to do so, simply because the agent or trustee representing all should, through ignorance or mistake, add fifteen cents to an assessment from which none received any benefit.

It is to be remembered that this is not an action against the company, as such, for some wrong committed by it. On the contrary, the suit is, in effect, a suit against the co-members of the insured. The certificate holders in this scheme of insurance insure each other; the losses are theirs; the funds collected are theirs; the company is but their agent to make the calculations, receive the collections and make the disbursements for them.

These facts, it seems to us, justify the conclusion that the whole plan contemplated the preservation of the rights of all the members by giving them relief in the event of an erroneous assessment by crediting their future assessments with any excess that might be collected from them.

Even if this was a suit against the company, as trustee, to recover for a loss occasioned by some negligence, it would not be held to a higher duty than

that of exercising such care and diligence as an ordinarily prudent man would exercise in the management of his own affairs. Surely, therefore, it could not have been within the contemplation of the parties to this insurance plan that the good faith, but, perhaps, erroneous addition of fifteen cents to an assessment should immediately terminate the obligation of a member to pay and authorize his beneficiary to recover whenever thereafter the defaulting insured shall have passed to the Great Beyond.

Under the plan, it was the privilege and duty of insured to challenge any assessment that was made, and to require reimbursement of any erroneous charge by a credit on his next succeeding assessment. It never was intended to so operate as to enable a member to terminate his obligation to pay, and yet enable his beneficiary to recover if, and whenever, it could be shown that some amount, large or small, had erroneously been added to the defaulted assessment.

3. The Connecticut Court, in the Dresser case, found, among other things, that (Rec., p. 22k):

> "In case of failure of any certificate holders to make payment in accordance with his agreement, his interest in said Safety Fund and all his claims thereon ceased."

The certificate provided that it was issued "In consideration of the representations, agreements and

warranties made in the application * * * **and of the further payment of all mortality calls** * * * levied against the herein-named member" (Rec., p. 428). "That ninety days from the receipt * * * of satisfactory proofs * * * of the death of the herein-named member **while this certificate is in force,** all the conditions hereof having been conformed to by the member * * * there shall be due and payable, **out of the Mortuary Fund, and not otherwise,** the indemnity of two thousand dollars" (Rec., p. 429).

The certificate provided further that (Rec., p. 433):

> "The member further agrees and accepts this certificate upon the express condition that, if either the Annual Dues, Mortality Calls or Safety Fund Deposit, as hereinbefore required, are not paid to said company on the day due, then this certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the certificate was in force, either from said company or the trustee of the Safety Fund; and that failure to make the stipulated payments shall absolutely terminate the member's liability therefor."

The Connecticut court undoubtedly had in mind when it embraced the above-quoted provision in its decree the conditions of the contract or certificate above quoted, and the fact that under other parts of

its decree an excess would not vitiate an assessment, but would simply render the subsequent assessment subject to credit for such excess, while on the other hand, if a member failed to make payment, his liability therefor immediately terminated, so that the company was entirely without remedy to collect the assessment or any part thereof. It was necessary, therefore, that the status of a non-paying member be fixed.

The effect of this provision of the Connecticut decree was, therefore, that the Mortuary Fund of the Safety Fund Division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime, since, as said by this Court in the Ibs case (237 U. S., *l. c.* 670), "failure to pay assessments would work a forfeiture"; but the trial court and the Supreme Court of Missouri held that the certificate in suit is payable out of the Mortuary Fund, notwithstanding the conceded and admitted fact that assessment or Call 126 levied against the insured six months prior to his death was not paid.

In the instant case the insured not only failed to pay the mortality call, but he also failed to pay the quarterly dues required to be paid in advance, so that he came squarely within the conditions of the Connecticut decree and that provision of the certificate that a failure to pay **either** the **annual dues** or

**mortality calls** shall render the certificate null and void.

We submit, therefore, that the state court failed to give full faith and credit to the Connecticut decrees in the Dresser case, contrary to and in violation of Article IV, Section 1 of the Constitution of the United States.

**The decision of the Supreme Court of Missouri in upholding the action of the trial court in permitting the recovery of penalty and attorneys' fees upon the facts in this case, deprives the defendant of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.**

Section 7068 of the Revised Statutes of Missouri, 1909, as amended by the Act of March 30, 1911 (Laws of Missouri, 1911, p. 282), reads as follows:

> "Section 7068. Damages, When Recoverable. In any action against any insurance company to recover the amount of any loss under a policy of * * * life * * * or other insurance, if it appear from the evidence that such company has vexatiously refused to pay such loss, the Court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not to exceed ten per cent on the amount of the loss, and a reasonable attorney's fee; and the Court shall enter judgment for the aggregate sum found in the verdict."

The only evidence on this issue offered on the trial of the case was the fact that petitioner had not paid the amount of the certificate, and the fact that its refusal to pay was based upon its interpretation of the contract that the failure of the insured to pay his assessment rendered his certificate unenforcible.

There was no evidence offered, either on the first or second trial of this case, to show that the refusal of the company to pay the claim was vexatious. The vexatious nature of the defense was left to the jury to be inferred from the defense itself.

The defense on the first trial was that the insured had failed to pay the assessment against him, and, therefore, his certificate of insurance had been by its own terms forfeited. In avoidance of that defense the plaintiff contended that the assessment was void, because, taking into account what was in the Mortuary Fund, it was excessive.

The jury, under the instructions of the Court, not only found against the company on the main case, but found that the defense was vexatious, and so included the penalty in the verdict.

The Supreme Court of the State sustained that verdict and affirmed the judgment upon it.

The case was then brought to this Court, where, following the precedent of the Ibs case, the judgment of the State court was reversed. The distinctions

made by the State Court between this and the Ibs case, this Court said, "seem to us unreal".

The defense made by the company being held by this Court to be good against the impeachment of it by the plaintiff, cannot be said to have been vexatious.

The case was remanded to the Supreme Court of Missouri "for further proceedings not inconsistent with the opinion of this Court".

The Supreme Court of the State sent the case back to the court of original jurisdiction which proceeded, over the objection of petitioner, to try the case *de novo* (Rec., pp. 23, 30).

The Circuit Court permitted an amendment to the reply which alleged that the unpaid assessment was void because it included 15 cents on account of a tax levied by the State, which tax was alleged to be illegal, and therefore should not have been included in the assessment.

The case was submitted to the jury upon this issue, and the jury, under peremptory instructions, found against the company upon the main question, and again found that the defense was vexatious.

And again the verdict of the jury that the refusal to pay was vexatious had nothing to rest upon except the defense itself. And the plaintiff did not discover the avoidance of the defense, although it grew out of known facts of record, until after trial through the

State courts, and not until upon argument in this Court.

In addition to this consideration is the fact that the petitioner was not dealing with its own funds or on its own account, but with trust funds and as a trustee. It "kept the books, levied the assessments, deposited the collections in the Mortuary Fund, and paid claims therefrom as they matured. It was not otherwise liable on the policies" (Ibs case, 237 U. S., *l. c.* 668). The company was a trustee of the fund (Ibs case, 237 U. S., *l. c.* 671), and it owed a duty to the beneficiaries (the members) to protect that fund against unjust demands. In the instant case the insured had failed to pay an assessment which under the terms of his certificate rendered the same void.

The company could not, and did not, gain anything for itself by its refusal to pay, because, under the terms of the certificate, payment would have been made out of the "Mortuary Fund, and not otherwise" (Rec., p. 429). Payment, however, of an unjustified claim might seriously affect the company, and as a trustee it was entitled to the judgment of a court as to whether, under the circumstances, there was liability. It cannot be said, therefore, that the company acted in bad faith in its refusal to pay.

Notwithstanding these facts the trial court refused to give either of the instructions requested by petitioner (instructions Nos. XXIII to XXVI; Rec., pp.

408, 409), set out at page 22 hereof, but gave the instruction requested by respondent, authorizing the jury to assess penalty and attorneys' fee if the jury found and believed from "all the facts and circumstances shown by the evidence that its refusal to pay was vexatious, that is, without reasonable cause" (Rec., p. 391), and this ruling was affirmed by the State Supreme Court, and in support of such affirmance, the Court refered to its former decision in 269 Mo., *l. c.* 42, where it said:

> "The submission of the question of damages and attorneys' fees to the jury was proper under the rule stated by this court in Keller v. Home Insurance Co., 198 Mo. 440, and Brown v. Assurance Co., 45 Mo., *l. c.* 227, where it is said that: 'The whole question of vexatious refusal or delay is a matter of fact to be determined by the jury. They must make up their verdict on this issue by a general survey of all the facts and circumstances in the case; and if, upon full consideration, they conclude that the refusal was unjustifiable and vexatious, the law authorizes them to assess the damages. The statute will not admit of the construction contended for by the counsel for the plaintiff in error, that before damages are allowed it must be explicitly proved by the plaintiff that the delay or refusal was vexatious.'
>
> We think that under this rule the evidence was ample to justify the submission of that question, and that the instruction of the Court properly defined the duty of the jury."

In the case of Bailey v. State of Alabama, 219 U. S. 219, 234, which involved the validity of a statute of Alabama, providing that the refusal or failure of a person who enters into a contract of service upon which he receives money or property to perform such service or refund the money shall be *prima facie* evidence of intent to defraud, this Court said:

> "It is no answer to say that the jury must find and here found that a fraudulent intent existed. The jury by their verdict cannot add to the facts before them. If nothing be shown but a mere breach of a contract of service and a mere failure to pay a debt, the jury have nothing else to go upon, and the evidence becomes nothing more because of their finding,"

and this court reversed a conviction.

When the nature of the defense is the only evidence from which its character as being vexatious or not is to be inferred, then it is a question of law for the Court. Here is no dispute as to the fact. The company made a specific and definite defense. Does that prove that it was vexatiously made? If so, it must be that the defense was frivolous. Resting as it did upon conceded facts, to be vexatious it must be obviously without merit. It must be one repugnant to the lowest mind and unconscionable in its quality.

The Missouri Court of Appeals, in Stix v. Travelers Ins. Co., 175 Mo. App., *l. c.* 180, has said that "the

fact that defendant declined to compensate the loss without litigation **is of itself evidence to prove the delay thereabout to be vexatious''.**

If this is to be taken broadly and without taking into account the nature of the defense, it is opposed to the later and wholesome announcement made by the Supreme Court of Missouri, Division No. 2, in the case of Non-Royalty Shoe Co. v. Phoenix Ins. Co., 210 S. W. Rep., *l. c.* 42, which is as follows, viz.:

> "We are convinced that a vexatious refusal to pay an insurance loss is not to be deduced from the mere fact that upon suit the verdict is adverse to the defendant (Patterson v. Insurance Co., 174 Mo. App. 44, 160 S. W. 59; Keller v. Insurance Co., 198 Mo. 440, 95 S. W. 903). If the fact of an adverse decision is to constitute the sole and decisive test, it would be fairly plain that this Court was in error when it held the statute to be constitutional; for it is only upon the fundamental ground of a vexatious refusal to pay that the penalty inflicted by the statute can be upheld. The defendant is to be allowed to entertain an honest difference of opinion as to its liability, or as to the extent of such liability under the contract of insurance, and to litigate that difference; otherwise, the provision of the statute is obviously so shot through with duress as to be invalid upon any view. It is from the very nature of the case, and from the protean

form which the facts of the case assume, difficult, if not impossible, to frame any general rule for use in determining when a refusal to pay is vexatious and when it is not. Judge Trimble, of the Kansas City Court of Appeals, has announced a rule which commends itself to us so far as it goes, and it goes as far as it is wise or safe to go in announcing a rule to govern cases wherein the facts are as variant as we find them in insurance cases upon this question. This rule reads thus:

" 'And while affirmative proof is not required to show vexatious refusal, yet the penalty should not be inflicted unless the evidence and circumstances show that such refusal was willful and without reasonable cause as the facts appeared to a reasonable and prudent man before the trial; and merely because the judgment, after trial, is adverse to defendant's contention, is no reason for inflicting the penalty' (Patterson v. American Ins. Co., 174 Mo. App., *loc. cit.* 44, 160 S. W. 62)."

This case decided by Division No. 2 had not yet been published in any form when the instant case was argued in Division No. 1.

We submit that the law as laid down by Division No. 2 plainly incompatible with the ruling of Divi-

sion No. 1 in the instant case, should prevail upon this issue.

Respectfully submitted,

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*Attorneys for Petitioner.*

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JAMES D. MAHE
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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 161.

HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Error,

v.

CECILIA BLINCOE, Administratrix of the Estate of ROSA BARBER, Deceased,
Defendant in Error.

In Error to the Supreme Court of the State of Missouri.

## BRIEF OF PLAINTIFF IN ERROR AND PETITIONER.

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## STATEMENT.

The questions presented by the record in this case are raised upon writ of error and application for writ of certiorari.

The suit was begun by petition filed in the Circuit

Court of Johnson County, Missouri, on June 17, 1911. It was an action by Rosa Barber, the beneficiary named in a policy or certificate of membership issued by the plaintiff in error and petitioner herein to the insured, who was the husband of the beneficiary. The case came to this court upon writ of error sued out from a prior decision of the Supreme Court of Missouri, and the opinion of this court is reported in 245 U. S. 146. The case involved the same kind of contract that was in issue before this court in the case of Hartford Life Insurance Company v. Ibs, 237 U. S. 662. The defense here and there was that the policy had become forfeited by nonpayment of an assessment due and payable under its terms. Here, as there, the beneficiary of the policy contended that the assessment was excessive and, therefore, void, except that upon the last trial of this case it was contended that the excessiveness arose by reason of the inclusion of fifteen cents in the assessment to cover a tax of two per cent to be paid to the state upon the amount of the assessment collected, under a statute of Missouri. The assessment was levied January 29, 1910, and was payable March 1, 1910. The insured died on June 5, 1910, without having paid anything on account of the policy or certificate of membership subsequent to December 6, 1909.

From a judgment in favor of the intestate of defendant in error and respondent (plaintiff below) in the trial court on the second trial, an appeal was prosecuted by plaintiff in error and petitioner to the Supreme Court of Missouri, which last named court was the highest court of the state in which a decision in the suit could be had and the judgment of which court in this case is final. The judgment of the Supreme Court of Missouri, which is now sought to be reviewed, was rendered June 2, 1919 (Rec., p. 455), and the motion of plaintiff in error and petitioner for a rehearing was overruled on July 9, 1919 (Rec., p. 459).

Thereupon the plaintiff in error and petitioner procured a writ of error and also filed in this court its petition for a writ of certiorari.

After the issuance of the writ of error the plaintiff in error died and the cause was revived in the name of the administratrix, the present defendant in error and respondent.

The statement in the opinion of this court in the case of Hartford Life Insurance Company v. Ibs, 237 U. S., l. c. 666 et seq., will furnish the Court with a clear conception of the plan of insurance involved and the conduct of the business by the plaintiff in error and petitioner, and accordingly we quote such statement, as follows:

"The Hartford Life Insurance Company, though a stock corporation under the laws of Connecticut, had what was known as the 'safety fund department,' conducted on the mutual assessment plan. The company kept the books, levied the assessments, deposited the collections in the Mortuary Fund, and paid claims therefrom as they matured. It was not otherwise liable on the policies.

"The mutual insurance plan contemplated the creation of a safety fund of $1,000,000 from membership fees. In addition to this there was to be a mortuary fund raised by graduated assessments levied on all the members for use in payment of death claims. These assessments were levied periodically and provision was made that in fixing the amount to be levied an allowance should be made 'for discontinuance in membership.' It so happened that the lapses were not so numerous as had been estimated and consequently each assessment realized something more than was needed to pay the matured claims. This difference, between the collections and the insurance paid, was retained in the mortuary fund, and, in time, the 'excess margins' amounted to nearly $400,000.

"In 1908 (1899) the Hartford Life Insurance Company determined to discontinue the safety fund department and to write no more insurance on the assessment plan. Thereafter no new members were admitted. This change of policy was the occasion of a disagreement between the certificate holders and the company. Accordingly,

Dresser and thirty other members, residing in different states, brought suit in a Connecticut court, 'in their own behalf and on behalf of all others similarly situated,' against the company, its directors and trustees. The bill attacked the management of the company and, among other things, insisted that it had been and was still levying assessments too many in number and too large in amount. The bill also alleged that the company had recently decided to discontinue writing insurance on the assessment plan and was endeavoring to induce members to surrender their certificates and to take out ordinary life policies in the company's stock department. By reason of this change of policy and the consequent decrease in membership in the safety fund department and the increase in assessments the bill alleged that the present certificate holders, who had created the mortuary fund, were entitled to an immediate distribution of the moneys therein.

"The company's demurrer was sustained and the bill dismissed. Dresser and the other certificate holders then took the case to the Supreme Court of Connecticut where the judgment was reversed (80 Connecticut, 681). The case having been remanded, there was an answer and a hearing. On March 23, 1910, the Court made findings of law and fact, many of which are not material to the matter involved in the present litigation. In reference to the mortuary fund, the trial court found that, though acting in good faith, the company in making assessments had

overestimated the number of lapses in membership and, consequently, the assessments had raised more than was needed to pay claims; that these excesses or margins had accumulated and amounted to many thousands of dollars; that these excess collections were in the mortuary fund and 'are now in constant use in the prompt payment of losses in advance of the receipt of the moneys to pay the same from the regular assessments, by which receipts the said fund is constantly reimbursed.

" 'The plaintiffs claimed it was improper and wrongful to accumulate these margins and to carry this balance in said mortuary fund, and claimed that said balance of margins should be distributed among the outstanding certificate holders, but it is held that it is proper and reasonable that the company should hold such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that purpose that the company should hold more than the amount of one average quarterly assessment for the previous year.

" '* * * The mortuary fund arising as above described or from any other source together with all income or interest thereon, belongs to the Men's Division of the Safety Fund Department, and the Insurance Company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in said department, and that any excess above the average of the quarterly assessment for the previous

> year shall be distributed in diminution of assessments by crediting and applying such excess on account of the next succeeding assessment.' "

There was duly pleaded and offered in evidence at the trial an exemplified copy of the record of the Superior Court of New Haven County, Connecticut, in the case of Charles H. Dresser and others v. Hartford Life Insurance Company and others (referred to in the above statement), to which cause the insured, Frank Barber, was a party by representation, the effect of the decree in which case was involved and passed upon by this Court when this case was here before, and also by the decision of this Court in the case of Hartford Life Insurance Company v. Ibs, 237 U. S. 662.

The certificate of membership or policy provides (Rec., p. 432) that the member "agrees to pay said company within thirty days from day on which notices bear date, all Mortality Calls determined as within set forth," and then provides (Rec., p. 433):

> "But if the laws of any country, state, county or municipality shall require a tax to be paid by said company on account of such payments, then the mortality calls hereon shall be determined so as to cover such tax."

The certificate of membership or policy of insurance also provides, among other things, that (Rec., p. 433):

> "3. The member further agrees and accepts this certificate upon the express condition that if either the annual dues, mortality calls or safety fund deposit, as hereinbefore required, are not paid to said company on the day due, then this certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the certificate was in force, either from said company or the trustee of the safety fund."

As shown, the certificate of membership or policy was of the **assessment** type, and provided that the quarter days for the payment of mortality calls "shall be the first day of March, June, September and December in each year" (Rec., p. 434).

As to the **dues** the certificate provided that the member agrees to pay the company for expenses, dues of three dollars per annum on each $1,000 indemnity, or by pro rata installments of the same, **in advance**, for periods of less than a year (Rec., p. 432).

Section 7099 of the Revised Statutes of Missouri, 1909 (which had substantially been in force since 1889, Rev. Stats. Mo. 1889, Sec. 5958), provides as follows:

"Every insurance company or association **not organized under the laws of this State** shall * * * annually pay a tax upon the premiums received * * * in this State * * * for insurance of life * * * at a rate of two per cent per annum in lieu of all other taxes, * * * which amount of taxes shall be assessed and collected as hereinafter provided."

Subsequent sections of the statute empower the Superintendent of the Insurance Department to make the assessment and enforce collection thereof.

The record shows (Rec., pp. 141, 261) that the State of Missouri exacted and the company regularly paid to the State a tax on the assessments collected from its members in Missouri, and that a similar tax had been included in every assessment or call against the insured, Frank Barber, from March 1, 1894, to December 1, 1909 (Rec., p. 379).

Upon the former writ of error No. 253, October Term, 1916, the record showed (page 128) that the assessment in question included the fifteen cents tax payable to the State of Missouri, and that similar taxes had been collected and paid to the State in previous years (former Rec., p. 243), and the record now here shows exactly the same facts and also that the assessment in question was made and levied in the same manner as the previous calls (present Rec.,

p. 344) and that a similar tax was included in each assessment upon the certificate in suit since March 1, 1894 (present Rec., p. 379).

Upon the former writ of error the defendant in error contended both in the brief and printed argument (pages 11 and 24 of brief of defendant in error on former writ of error) that the inclusion of this tax rendered the assessment void, and it was urged that this necessitated an affirmance of the judgment complained of, but notwithstanding these facts this Court reversed the former judgment of the Supreme Court of Missouri.

After the cause was remanded and upon the second trial thereof, the plaintiff in the trial court urged the same question upon the trial court. The defendant in the trial court (plaintiff in error and petitioner here) thereupon requested instructions numbered XIV to XVIII (Rec., pp. 401, 405), all of which were refused, and to the refusal to give which the the defendant excepted. Those instructions are as follows:

XIV.

"The Court instructs the jury that it is specifically provided by the certificate or policy in suit that if the laws of any state shall require a tax to be paid by the defendant on account of mortality calls or assessments payable by the holders of such certificates, such mortality calls

or assessments to be levied by the defendant under such certificates shall be computed so as to cover and include such tax; that it is specifically provided by Section 8043, R. S. Mo. 1899, in force at and prior to the levy of said assessment or call 126 against the said Frank Barber under the policy or certificate in suit, that every insurance company or association not organized under the laws of the State of Missouri shall pay annually a tax upon the premiums received for insurance of life in the said State of Missouri; that the defendant company, in compliance and in accordance with the laws of the State of Missouri, filed with the insurance department of the State of Missouri annual reports for the years ending December 31, 1909, and December 31, 1910; that said reports so filed by the defendant company with the insurance department contained the amount of mortality calls or assessments collected by the defendant company on certificates in its safety fund department held by citizens of this State, for the years ending December 31, 1909, and December 31, 1910, respectively; that after the filing of said reports as aforesaid, the insurance department of the State of Missouri computed and ascertained from said reports the amount of the tax payable by the defendant company on premiums or assessments collected by it from holders of certificates in the safety fund department residing in the State of Missouri; that it appears from the undisputed evidence that in computing said tax the said insurance department included and

assessed the defendant upon all assessments or mortality calls collected by it under certificates held by persons in the State of Missouri and demanded of the defendant the payment of tax computed and based upon all of the assessments paid to defendant under the certificates held by persons in the State of Missouri, which said tax, so computed by the insurance department as aforesaid, was paid by the defendant; and under the circumstances, the Court instructs you that you cannot find from the evidence that the assessment or call 126 levied against the insured under the certificate sued on herein was illegal and void because it included two per cent of the amount of said assessment as a tax to the State of Missouri on account of such assessment."

XV.

"The Court instructs the jury that they cannot find in this case that the assessment or mortality call No. 126 levied against the insured, Frank Barber, was illegal or void because of the fact that two per cent of the amount of said assessment was demanded of the said Frank Barber by defendant as a tax payable to the State of Missouri on account of such assessment."

XVI.

"The Court instructs the jury that the defendant herein was merely acting as trustee for the said Frank Barber and all other certifi-

cate holders in the safety fund department of the defendant company in the levy and calculation of assessments under the certificate in suit and all other certificates issued in the safety fund department of the defendant company; that in the exercise of the powers and duties imposed upon the defendant as such trustee the defendant is only obligated to exercise that care and prudence which an ordinarily prudent person would exercise under the same or similar circumstances, and that the defendant as such trustee is not liable to the holders of such certificates for mere errors of judgment in the computation and levy of such assessments; that it is specifically provided in the certificate or policy in suit that if the laws of any state shall require a tax to be paid by the defendant on the mortality calls or assessments payable under such certificate, such mortality calls or assessments shall be determined so as to cover and include the amount of such tax; that it is provided by Section 8043, R. S. Mo. 1899, in force at and prior to the time of the levy of the assessment or call 126 under the policy in suit, that every insurance company or association not organized under the laws of the State of Missouri shall pay annually a tax upon the premiums received for insurance of life in the State of Missouri; that the action of the defendant in including in said assessment or mortality call 126, two per cent of the amount thereof as a tax due the State of Missouri, was a mere error of judgment on the part of the defendant and the Court

therefore instructs you that you cannot find that said assessment or mortality call 126 levied against the said Frank Barber was illegal or void because it was computed so as to include two per cent of the amount of said assessment as a tax due to the State of Missouri on said assessment."

XVII.

"The Court instructs the jury that it was adjudged by the Supreme Court of the United States on the former appeal of this cause that assessment or call 126 levied by the defendant against the said Frank Barber under the certificate or policy sued on herein, was valid and legal, and that the plaintiff is now estopped by reason of such finding and holding of the Supreme Court of the United States in this cause from asserting that said assessment or call is illegal, excessive or void."

XVIII.

"The Court instructs the jury that the plaintiff is estopped by the decision and judgment of the Supreme Court of the United States on the former appeal of this case from asserting that assessment or call No. 126, levied against the said Frank Barber by the defendant under the certificate sued on herein, was illegal or void because of the fact that two per cent of the amount of said assessment was demanded of the said Frank Barber by the defendant as a tax payable to the State of Missouri on account of such assessment."

Although the judgment now sought to be reviewed was the result of the second trial of the case, and notwithstanding that the judgment against the plaintiff in error or petitioner at the first trial had been reversed, and, in the absence of any evidence that plaintiff in error and petitioner here had "vexatiously refused to pay" except the mere fact that it had not paid the amount of the policy to the respondent, the trial court, over the exception of plaintiff in error and petitioner gave the following instruction requested by respondent (Rec., p. 380):

> "And the Court further instructs the jury that if you find and believe from the evidence that the defendant, before the institution of this suit, refused to pay plaintiff the amount of the policy sued upon, and shall further find and believe from all the facts and circumstances shown by the evidence that its refusal to pay was vexatious, that is, without reasonable cause, then you may also allow her in addition to the amount of the policy sued upon and interest thereon, a sum not exceeding 10 per cent of the amount of the policy sued upon, together with a reasonable attorney's fee, said attorney's fee not to exceed the sum of $750.00, and should return a verdict for the aggregate sum."

And refused, over the objection and exception of defendant, to give the following instructions requested by defendant (Rec., p. 408):

XXIII.

"The Court instructs the jury that the plaintiff is not entitled to recover against the defendant anything by way of damages and attorney's fees."

XXIV.

"The Court instructs the jury that there is no evidence in this case that the refusal of the defendant to pay the plaintiff the amount claimed by her under the policy in suit is or was vexatious, and that the plaintiff is not entitled to recover damages or attorneys' fees against the defendant."

XXV.

"The Court instructs the jury that the undisputed and uncontradicted evidence in this case establishes that the refusal of the defendant to pay to the plaintiff the amount claimed by plaintiff under the policy in suit was made in good faith and was not vexatious and that the plaintiff is not entitled to recover damages or attorneys' fees against the defendant."

XXVI.

"The Court instructs the jury that Section 7068, Revised Statutes of Missouri for 1909, and the Act of March 30, 1911, Laws of Missouri for 1911, p. 282, in amendment thereof, if held or construed as authorizing a recovery by plaintiff for damages and attorneys' fees against the defend-

ant herein, are unconstitutional and void and deprive the defendant of its property without due process of law and deny to defendant the equal protection of the law, contrary to and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the reason that there is no evidence in this case that the refusal of the defendant to pay the plaintiff the amount claimed by her under the policy in suit is or was vexatious."

## SPECIFICATION OF ERRORS RELIED ON.

The errors of the Supreme Court of Missouri relied upon by plaintiff in error and petitioner are the following:

1. The Court erred in sustaining the action of the trial court in giving to the jury that portion of the instruction requested by the plaintiff which authorized the assessment against defendant of damages and attorney's fee (Rec., p. 290) for the reason that the statute of Missouri, Section 7068 Revised Statutes of Missouri, 1909, as amended by the Act of March 30, 1911 (Laws of Missouri for 1911, p. 282), is unconstitutional and void because the same is in violation of Section 10, Article I of the Constitution of the United States, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and because the construction thereof by the courts of Missouri in this case constitutes a rule of judicial construction violative of said provisions of the Constitution of the United States, and because the application of said statute to the facts of this case denies to the defendant due process of law as guaranteed to it by the Constitution of the United States.

2. The Court erred in sustaining the action of the trial court in submitting to the jury the question of

the imposition against appellant (defendant) of damages and attorney's fees as for vexatious delay; that Section 7068 of the Revised Statutes of Missouri, 1909, as amended by the Act of March 30, 1911 (Laws of Missouri for 1911, p. 282), as construed by the trial court to apply to the facts of this case, is unconstitutional and void, because the statute, as so construed, deprives the defendant of its property without due process of law, and as so construed the statute aforesaid is repugnant to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States and, therefore, unconstitutional and void.

3. The Court erred in sustaining the action of the trial court in refusing to instruct the jury, as requested by the appellant (defendant), that upon the former writ of error in the Supreme Court of the United States in this case, the particular assessment or call in question No. 126 levied against the insured, Frank Barber, under the certificate or policy sued on herein was declared valid and legal and by reason of such finding and holding of the Supreme Court of the United States the plaintiff was estopped from asserting the contrary.

4. The Court erred in not holding that the question of the inclusion of the fifteen cents tax, in assessment No. 126 levied against the insured, Frank Barber, was not properly before the trial court for

the reason that all questions concerning that tax were necessarily before the Supreme Court of the United States upon the former writ of error in this case in that court and the decision on that writ of error became the law of the case controlling upon the trial court on the second trial of said case and upon the Supreme Court of the State upon the appeal from such second trial.

5. The Court erred in holding that the inclusion of fifteen cents in the assessment or call No. 126 against the insured, Frank Barber, to cover the tax of two per cent paid by appellant to the State of Missouri under the provisions of Section 7099 of the Revised Statutes of Missouri, 1909, rendered such assessment excessive and void, and that the nonpayment of such assessment constituted no ground for the forfeiture of the insurance; that in so holding the Court has failed to give full faith and credit to the decree of the Superior Court of New Haven County, Connecticut, in the case of Dresser et al. v. Hartford Life Insurance Company et al. (an exemplified copy of the record and decree in which case was offered and received in evidence at the trial of this cause), contrary to and in violation of Article IV, Section 1 of the Constitution of the United States, in this (1) that said assessment or call 126 was adjudged to be valid and lawful by the Connecticut court in the Dresser decree; (2) that under

the Dresser decree it was adjudged that an excess in an assessment, if any, should not vitiate or invalidate the assessment, but should simply render the succeeding assessment subject to credit for such excess; and (3) because it was held by the Court of Connecticut in the Dresser decree that the mortuary fund of the safety fund division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime and the continuance of said certificate, whereas the trial court and the Supreme Court of Missouri hold that the certificate in suit is payable out of the mortuary fund notwithstanding the conceded and admitted fact that assessment or call 126 levied against the insured prior to his death was not paid when due.

For which errors the plaintiff in error prays that the judgment of the Supreme Court of the State of Missouri may be reversed and that the cause be remanded with such directions as, according to law and justice, shall seem meet and proper to the Supreme Court of the United States.

# ARGUMENT.

## The Decision of the Supreme Court of Missouri Is at Variance With the Law of the Case as Established by the Decision of This Court on the Prior Writ of Error.

Before proceeding to a discussion of the questions involved in the above headline, we desire to present a few observations concerning the decision sought to be reviewed.

This Court in its opinion on the former writ of error (245 U. S., l. c. 150) characterized the basis of the decision of the Supreme Court of Missouri as a "make-weight." If such statement was justifiable as to the former decision of the Supreme Court of Missouri, it most certainly is applicable to the decision now sought to be reviewed.

The decision under review is based wholly upon the ground that defendant included in the assessment the sum of 15 cents to cover a tax of 2 per cent, which the State of Missouri was demanding of it (under the provision of an Act which was on the statute books of the State since 1889), and which defendant paid and had been paying for many years. The decision of

the Supreme Court of Missouri, which held that the tax did not apply to assessments, was rendered more than six years after the assessment in question was levied, and that decision was by a divided court, four to two, so that the question of the application of the statute to assessments was not sufficiently free from doubt to call forth a unanimous decision from the Supreme Court of that State (Bankers' Life Co. v. Chorn, 186 S. W. 681, decided May 15, 1916).

The Supreme Court of the State in the case at bar based its decision upon what we believe to be wholly untenable non-federal question, which does not sustain the judgment in this case (Ward v. Board of County Commissioners, 40 Sup. Ct. Rep., l. c. 421, and cases cited).

No claim is made that the company was acting in bad faith in including the 15 cents in the assessment. It is to be remembered that the insured was one only of 11,000 members. The defendant was acting for those members. It was the representative of the insured in dealing with his co-members. What it deemed a proper charge against him it also charged to the other 10,999 members who were in the same class as the insured; so that whatever the defendant did as to the insured in representing the 10,999 members, it also did as to the 10,999 members in representing the insured. Therefore, the

consequences of its acts were the same as to all, and really constituted the act of the members themselves. There can be no question that if a particular member is imposed upon by charging him a greater proportion than his share under the contract, he should have a remedy against his co-members. But that is not this case. The record here shows that every member was assessed his proportionate share of the death losses, plus the tax which the State exacted upon his assessment. Neither the defendant nor the co-members of the insured profited by the assessment of such tax, because, as the record shows, the whole amount thereof was paid to the State which exacted the tax.

**Defendant Not Licensed as Assessment Company in Missouri.**

Defendant was also justified in assuming that it was liable for the tax, even if assessments levied by companies licensed to do business in the State were not so liable for the following reasons:

Section 7099 of the Revised Statutes of Missouri 1909 (quoted at page 9 hereof) required every insurance company or association not organized under the laws of Missouri to pay a tax of 2 per cent on the premiums collected in the State.

Section 6954 of the Revised Statutes of Missouri 1909 (Article III, relating to insurance on the assessment plan), provides:

> "Corporations organized or doing the business of life insurance **under this article** shall provide for the accumulation of an emergency fund which shall not be less than the proceeds of one death assessment on all policy or certificate-holders thereof; * * * said fund shall be accumulated by existing corporations within six months from the date of accepting the provisions of this article; * * * which fund, together with the income thereon, shall be a trust fund for the payment of death claims or other benefits provided for in their policies or certificates, and shall be invested in securities in which insurance companies are allowed by law to invest their capital. These securities shall be deposited in trust with the Superintendent of the Insurance Department of the State. * * * If, in any period of six months the death rate of any such corporation shall be in excess of the annual rate of mortality as shown by the American Life tables, it shall be lawful for such corporation to draw out any portion of said securities necessary to meet such excess."

There is no evidence whatever that the defendant ever accepted the provisions of Article III, or that it ever received or sought a license to do business in Missouri upon the assessment plan, and, in fact, it

never did qualify under the above article. Indeed, it could not have done so under the provisions of the certificates of membership issued to its members.

In the first place, the evidence shows (Rec., p. 77) that in 1867 the defendant began writing legal reserve insurance, and so continued until the end of 1879; in the early part of 1880 it began to write the safety fund business, such as the certificate in suit; the latter business it continued to write until 1899, and it then resumed the writing of legal reserve insurance to the exclusion of safety fund insurance, and so continued until 1913; but during all of the period from 1879 to 1913 it had in force legal reserve contracts, some issued prior to 1879, and others issued subsequent to 1899 (Rec., pp. 225, 268), consequently, the corporation defendant was not one organized and subject to the provisions of Article III, Chapter 61, of the Revised Statutes of Missouri 1909.

In the second place, the company did not and could not accumulate the emergency fund required by the Missouri assessment article. The certificate issued to the insured, as well as all other certificates issued by the company, provided for the payment of ten dollars on each one thousand dollars of insurance, to create a safety fund, which the certificate provided should be deposited with the trustee of that fund for the specific purposes set forth in the certificate or policy.

The certificate also provided for the payment by

the member "of all mortality calls proportioned to the indemnity herein provided for, levied against the herein-named member **to form a mortuary fund for payment of all indemnity matured by deaths of members.**"

The Company, therefore, was limited in the application of any money which came into its hands by the contract aforesaid, between it and the insured. It was powerless to accumulate any fund other than the Mortuary Fund, and the amount of this Mortuary Fund was limited by the terms of the Connecticut decree in the Dresser suit (Ibs case, 237 U. S., l. c. 668) to a quarterly assessment equal to the average of the four preceding quarterly assessments, and, by the terms of the certificate, said fund was to be "in no wise chargeable or liable for any use or purposes other than for the settlement of death claims." The record shows (Rec., p. 134) that the average monthly death losses in 1909, the year immediately preceding the assessment in question, exceeded one hundred thousand dollars per month. The record also discloses that the average amount of the four preceding quarterly assessments was about three hundred thousand dollars, so that the latter sum was the extreme limit that the Company might accumulate in that fund. It was impossible, therefore, for the Company to invest any of its funds in securities as required by the assessment laws of Missouri, and replenish this

fund whenever its losses exceeded the designated Mortality Table, for the reason that its death losses were in excess of one hundred thousand dollars per month, and it was necessary to constantly resort to the Mortuary Fund for the purpose of making prompt payment of death claims between assessment periods (which the contract provided should be made quarterly) in order to preserve the integrity of the plan of insurance, and there is no warrant in the contract for the accumulation and investment of a fund other than the Safety Fund, which is in the hands of another company as trustee.

This Missouri assessment law was undoubtedly designed for **mutual** assessment companies with the thought that its requirements could be complied with by **legislation** by the **legislative and representative** body, which is a prominent feature of **mutual assessment concerns** rendering their **schemes of insurance** subject to **organic legislative modification**. No such thing here. The defendant had, and has, outstanding contractual obligations as unalterable as the laws of the Medes and Persians. It simply could not conform to the Missouri assessment article.

**Non-Licensed Foreign Assessment Company Liable to General Insurance Laws in Missouri.**

It was the law in Missouri that a foreign corporation doing a life insurance business in Missouri was

not entitled to the benefits and exemptions of article III relating to insurance on the assessment plan unless such corporation secured a license under the provisions of the act, and that to operate without such license would subject the corporation to the general insurance laws of the State. Thus, in Schmidt v. Foresters, 228 Mo., l. c. 700, the Court says:

> "It (the insurance company) cannot claim the benefits of the law merely because its contracts are of the character mentioned in the law, but to claim the exemption given it must come in under the law, **and make its contracts under the law.** If it does that, then the law is read into and becomes a part of the contract, **but until it does do that the general law is and must be read into each and every one of its contracts** made with a citizen of Missouri."

So that not only did the company act in good faith when it included the fifteen cents' tax in the assessment, but it was justified in doing so both because the Insurance Department was demanding the payment under circumstances apparently justifying the action, and the decisions seemed to make the company liable because of the absence of a license.

**Law of the Case Under Former Decision of This Court.**

But, be that as it may, the effect of the inclusion of this tax in the assessment was presented to this court by the defendant in error on the former writ of

error, and it was then claimed and urged by the defendant in error that, irrespective of the other questions involved, the inclusion of the tax rendered the assessment void and necessitated an affirmance of the judgment then before the court. To support which contention defendant in error cited the authorities which will be found on page 25 of the brief of defendant in error on the former hearing in this Court. (Case No. 252, October Term, 1917).

The concrete question before this Court on the former writ of error was whether or not the particular assessment which included the fifteen cents' tax, was authorized by the Connecticut decree in the Dresser case. Necessarily involved in that inquiry was the question whether or not the fifteen cents included therein was payable. This Court answered the inquiry in the affirmative. This Court could not have held that this assessment was authorized by the Connecticut decree and at the same time hold that it was void because it included the fifteen cents' tax. The Court said (245 U. S., l. c. 149):

> "It is obvious from the evidence that this assessment was levied in the usual way adopted by the company and **tacitly sanctioned by the Connecticut judgment.**"

It is true that the opinion of this Court on the former writ of error does not discuss the question of the inclusion of the tax, but the question was in

the record, was necessarily involved, and was presented to this Court. If that tax rendered the assessment void then, of course, the other questions were of no moment and the judgment attacked must, of necessity, have been affirmed. The important question presented at that time, as here, was as to the validity of the assessment. If the assessment was void for any reason, the matter was at an end, and the result must have been an affirmance of the former judgment."

It necessarily follows that the trial court should have ruled that the question of the validity of the assessment, because of the inclusion of the fifteen cents' tax, had been adjudicated, and it should have given the instructions requested by plaintiff in error and petitioner.

Questions of the character here involved have been the subject of consideration by this Court many times. For instance: In Gould v. Evansville, Etc. R. R., 91 U. S., l. c. 532, the Court says:

> "Where the parties and the cause of action are the same, the prima facie presumption is that the questions presented for decision were the same, unless it appears that the merits of the controversy were not involved in the issue; the rule in such a case being, that where every objection urged in the second suit was open to the party, within the legitimate scope of the pleadings, in the first suit, and might have been presented in that trial, the matter must be considered as hav-

ing passed in rem judicatam, and the former judgment in such case is conclusive between the parties."

The case of United States Trust Company v. New Mexico, 183 U. S. 535, involved an action for the foreclosure of a mortgage given by a railroad. The Territory of New Mexico filed an intervening petition claiming a lien for and payment by the receiver of certain taxes. The lower court ordered the intervening petition dismissed on the ground that the "matters and things therein set up" were "not sufficient to entitle the said intervening petitioner to the relief sought by its petition," which ruling upon appeal to the Supreme Court of the United States was reversed and the cause remanded for further proceedings.

After remand, a decree was finally entered in favor of the Territory for a less amount than it claimed, and both parties appealed.

On the second appeal the Supreme Court said (page 539):

> "The District Court dismissed the intervening petition on the ground that it presented no claim against the property or the parties. The reversal by this court of such an order is an adjudication that upon the face of the petition a valid claim was presented, and is conclusive of such prima facie validity, **not merely against objections which were in fact made, but also against those which might have been made.**" (Citing cases.)

The case of Chaffin v. Taylor, 116 U. S. 567, was an action in trespass de bonis asportatis. The defendant justified the taking as Treasurer of Henrico County, Virginia, charged with the duty of collecting taxes due the State, which on demand the plaintiff had refused to pay. To this plea the plaintiff replied that he tendered payment of amount due in coupons cut from bonds of the State receivable in payment of taxes, by virtue of an act passed March 30, 1871.

To this reply defendant demurred that by the act of January 26, 1882, he was forbidden to receive coupons in payment of taxes, and that by Act of March 13, 1884, an action for trespass did not lie. On this demurrer judgment was rendered for defendant, which was reversed by this Court on the ground that the statutes referred to were unconstitutional as impairing the obligation of the contract entered into by the State with the holders of the bonds, and the cause was remanded with directions to proceed therein in conformity with the law and the opinion of the Supreme Court.

The trial Court then permitted defendant to file a rejoinder to the reply, setting up an act of January 24, 1882, under which the collector was permitted to receive such coupons only for identification and verification, and alleging that plaintiff was unwilling to conform to said last mentioned act. To this rejoinder a demurrer was filed and on such demurrer judgment

was entered for defendant, the trial court being of the opinion that because the act of January 24, 1882, was not before the Supreme Court, the question was open for its decision. On writ of error from this latter judgment this Court, referring to its former decision, said:

> "It was there decided that the taxpayer had a contract right to pay his taxes in coupons, that a tender of them for that purpose, as to subsequent steps to collect the tax as delinquent, was equivalent to payment, and that a seizure of property under a levy thereafter for their non-payment was a trespass, notwithstanding any act of the General Assembly to the contrary, for such an act, being in breach of the obligation of the contract of the State, is unconstitutional, and therefore null and void.
>
> "The rejoinder of the defendant allowed to be filed after the judgment of reversal, therefore, **sought again to draw in question the very matter which had been already finally adjudged by this Court in the same case.** It did not deny the genuineness of the coupons tendered, nor the fact of tender, and the question of law broadly decided on the demurrer to the replication necessarily involved **every defense**, arising as matter of law, **that could be made** upon any existing acts of the General Assembly of Virginia, for the whole law of the case, as to the plaintiff's legal right to recover on his cause of action, was presented by the pleadings, **and was concluded by the judgment of reversal.**

"As was said in Clark v. Keith, 106 U. S. 464, 'that question is no longer open in this case, for the reason that it has long been settled that whatever has been decided here on one writ of error cannot be re-examined on a subsequent writ brought in the same suit.' This rule was distinctly stated in Supervisors v. Kennicott, 94 U. S. 498, where numerous authorities are cited, beginning as early as Himely v. Rose, 5 Cranch, 313."

In an early case (Tyler v. Magwire, 17 Wall., l. c. 283), this Court said:

"Brought here as the cause is by a second writ of error, it is settled law in this Court that nothing is brought up for re-examination and revision except the proceedings of the subordinate court subsequent to the mandate. It has been settled, says Mr. Justice Grier, by the decisions of this Court, that after a case has been brought here and decided and a mandate issued to the court below, if a second writ of error is sued out it brings up for revision nothing but the proceedings subsequent to the mandate. **None of the questions which were before the Court** on the first writ of error can be reheard or examined upon the second, as it would lead to endless litigation."

The same rule is announced by many of the appellate courts of the country, some of which we will now refer to. In the case of Pitkin v. Shacklett, 117 Mo. 548, the validity of certain taxes was raised after the

case had been remanded to the trial court. The opinion of the Court upon the second appeal from the action of the trial court in overruling the objection to the allowance of such taxes, is as follows:

> "MacFarlane, J.—This is a second appeal in this case. The opinion of the former appeal is reported in the 106 Mo., on page 574. The judgment was then reversed and the cause remanded with directions to the Circuit Court to enter judgment in favor of plaintiffs for the **proper proportion of the amount paid by the** purchaser at tax sale for the whole tract, subsequent taxes paid by plaintiff or the purchaser with penalties and interest as provided by section 219, page 1206, 2 Wagner's Statutes. The amount for which the land was sold at tax sale, and the amount of subsequent taxes paid, with dates of payment, appeared in the record. The mandate simply requires a calculation of the penalties and interest, required by the statute to be paid, and the proportion thereof chargeable to this land. The Court seems to have literally followed the mandate.
>
> "On the trial the defendant made objections to the allowance of the amount of taxes, paid subsequent to the tax sale, on the ground of some irregularity in the assessment and levy. The Court overruled the objection for the reason that, under the mandate of the Court, these matters were not open to further inquiry. In this the Court did not err. **On the former trial the validity of the taxes was not questioned, and their legality was adjudicated under the judgment of**

> **this Court,** and the question could not be reopened (Stump v. Hornback, 109 Mo. 277; Hickman v. Link, 116 Mo. 123, and cases cited). Judgment affirmed. All the judges concur."

In Hill v. Draper, 37 S. W. (Ark.) 574, the Supreme Court had passed upon a conveyance of partnership property to a creditor of one of the partners setting aside the sale to the creditor and remanding the case for further proceedings consistent with its opinion. The trial court thereafter permitted defendants to amend their answer and then upon evidence as to facts which were known to defendants before and at the time the cause was first heard, it was held that plaintiffs were estopped to complain of the sale, and dismissed the complaint. The Court, quoting from a prior decision, says:

> "It results from the nature and supremacy of this Court that no inferior tribunal can review, alter, or modify its judgments or decrees, for any supposed error, **or for any matter which might have** been considered here,"

and accordingly reversed the decree of the trial court.

In the case of Castleman v. Buckner (Ky.), 202 S. W. 681, an appeal had been prosecuted from a ruling upon exceptions to a sale. On the second appeal exceptions were urged because the provisions of the code under which the sale was ordered were not complied with. The Court said, referring to the former appeal:

"No other question was determined and, under the well-recognized rule of practice prevailing in this State, all other questions which were raised, **or could have been raised,** are now res adjudicata. * * *

"Under the res adjudicata rule referred to, the appellant's exceptions cannot be considered on this appeal, even if they possessed merit, which we do not find to be the fact."

In Illinois Life Insurance Co. v. Wortham, 119 S. W. 802, the Court says:

"Several questions are raised by counsel for appellant in brief upon this appeal, which under a long line of authorities cannot now be considered for the reason that they were settled on the former appeal. **Even though these questions were not made where they were such as should or might have been made, and were before the Court, they will be regarded as having been passed on.** This rule has been invariably adhered to in all cases where the opinion does not expressly state that a particular point is not passed upon."

See, also, Clark v. Brown, 119 Fed. 130.

The exact question determined by the Supreme Court of the United States in Hartford Life Insurance Company v. Barber, 245 U. S. 148, was that call No. 126, upon which the insured defaulted, was authorized by the Connecticut decree, was a valid call and properly payable to the insured. This ruling

precluded subsequent contrary contention, as Mr. Justice Brewer said in Trust Company v. New Mexico, 183 U. S. 535:

> "Not merely against objections which were in fact made, but also against those which might have been made."

In Hastings v. Hennessey, 70 Mo. App. 354, the Court reversed the trial court, which held that a bond given in a prior suit was a statutory bond only as to costs, and that as to all other undertakings it was a common-law bond and void for want of consideration. On a retrial the defendants undertook to inject into the case a defense that the complaint in the unlawful detainer suit was fatally defective, whereby the judgment therein was a nullity, etc. The Circuit Court, however, entered judgment on the bond, and, in affirming the latter decision, the Court says:

> "The judgment in this case must be affirmed. The matters now urged must be held to be res adjudicata. The entire record was before us on the first appeal, and the special matters now urged to defeat the liability of the defendants on the bond were presented by that record and were open to dispute and presumptively they were considered by the Court in making its disposition of the case. There would be no end of litigation if this were not the rule (Bevis v. R. R., 30 Mo. App. 564; Bank v. Taylor, 62 Mo. 338)."

In the case of Wellsville Oil Co. v. Miller, 150 Pac. 186, 189, the Supreme Court of Oklahoma, quoting from one of its prior decisions, says:

> "All questions open to dispute, and either expressly or by necessary implication decided on appeal to this court will not be opened for review on second appeal, but such decision becomes the settled law of the case as to all such questions, and is not subject to re-examination."

This case on appeal to the United States Supreme Court was affirmed, 243 U. S. 6.

In re Cook's Estate, 143 Ia. 733, 122 N. W. 578, after a remand of the case to the trial court, a statute of Nebraska was for the first time pleaded as defeating the recovery, but which statute had not been pleaded on the former appeal. The Court said:

> "That the former opinion was res adjudicata, not only as to all matters which were pleaded, but as to all matters necessarily involved and which might have been pleaded, is fundamental."

In Perrault v. Emporium Department Store Co., 83 Wash. 578, 145 Pac. 438, the Court says:

> "This Court has often said that it will not entertain appeals piecemeal. In an unbroken line of decisions we have consistently held that questions determined on appeal, or which might have been determined had they been presented, will not be considered upon a second appeal of the

same action. As to such questions the first appeal conclusively settles the law of the case" (citing many authorities).

In Nashville, C. & St. L. Ry. Co. v. Banks, 168 Kentucky 579, 182 S. W. 660, the Court, after stating that the particular matters relied upon were not grounds of reversal on the first appeal, but were presented to the Court on that appeal, says:

> "The rule long since established in this Court is that where the first opinion does not contain any notice of errors relied on for reversal by the appellant, if these same errors appear upon the second appeal and are relied on for reversal, they will be considered as having been decided adversely to the contention of the appellant upon the first appeal."

We respectfully submit that it was error to hold that the inclusion of the 15 cents rendered the assessment void, because such ruling was contrary to the law of the case as established by this Court on the prior writ of error.

**The Supreme Court of Missouri, in Violation of Article IV, Section 1, of the Constitution of the United States, Refused to Give Full Faith and Credit to the Decree of the Connecticut Court in the Dresser Case.**

The judgment of the Supreme Court of Missouri is violative of the provisions of Article IV, Section 1, of the Constitution of the United States in that it fails to give full faith and credit to the decree of the Connecticut Court in the Dresser case, because,

1. An assessment levied as was call No. 126, was adjudged to be valid and lawful by the Connecticut Court in the Dresser case;

2. Under the Dresser decree it was adjudged that an excess in an assessment, if any, should not vitiate or invalidate the assessment, but should simply render the succeeding assessment subject to credit for such excess; and

3. It was held by the Connecticut Court in the Dresser case that the Mortuary Fund of the Safety Fund Division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime, and the continuance of said certificates, whereas the trial court and the Supreme Court of Missouri held that the certificate in suit is payable out of the

Mortuary Fund, notwithstanding the conceded and admitted fact that assessment or call No. 126 levied against the insured prior to his death was not paid.

We will discuss the foregoing propositions in the order above stated.

1. The Dresser case in the Connecticut Court involved all assessments levied previous to the institution of that suit on October 19, 1906. It was brought by twenty-nine members residing in fifteen states (one of whom was W. O. Oldham, of Springfield, Missouri) for "the benefit of themselves and all others similarly situated", and it was held by this court that the decree in that case was "binding upon all other certificate-holders" (Hartford Life Ins. Co. v. Ibs, 237 U. S. l. c. 672).

The record in the present case shows that every assessment levied against the members in Missouri from March 1, 1894, to December 1, 1909, had included in it the two per cent tax to be paid to the State (Rec., pp. 141, 261, 379).

The suit involved the validity of every assessment made, it being claimed that the company was "levying assessments unnecessary in amount and number", but the Connecticut decree found that

> "The Hartford Life Insurance Company did not levy assessments **unnecessary in amount** or number" (Rec., p. 22a), and

"The Hartford Life Insurance Company levied the assessments **provided for in the plan and in the certificate above set forth**" (Rec., p. 22a).

The Connecticut court, therefore, passed upon the validity of the assessments which included such tax, and to now hold that the inclusion of the tax vitiated the assessment against the insured, fails to give effect to a decree binding upon all the parties, because if the inclusion of the tax rendered call 126 void, every prior assessment was unnecessary in amount to the extent of the tax, and consequently void. It was clearly impossible for the prior assessment to be valid and not be unnecessary in amount if there was included in them any item that would destroy their validity.

2. The Dresser decree, as held by this court on the former writ of error (245 U. S., l. c. 150), contemplated a possible excess in assessments, because as said by this court, the assessment "necessarily was levied as an estimate". All of the circumstances involved in the plan of insurance demonstrates the correctness of this conclusion.

The company was a mere trustee acting for the insured and his co-members. It was his representative as well as the representative of his co-members. It was exacting from him the same contribution that was being required of his co-members. If the insured

saw fit to terminate his membership, neither his co-members nor the company could prevent such action nor enforce payment of the demand, because his contract provided "that failure to make the stipulated payments **shall absolutely terminate** the member's liability therefor." The insured, on the other hand, had the right, after payment of any excess, to insist upon a credit of such excess upon the next succeeding assessment. The termination by the insured of his contract was of no advantage to the company, but a distinct loss, because the company was deprived of its remuneration of $3.00 per thousand of insurance per year, and yet it had no recourse against him.

The plan, as interpreted by the courts, was undoubtedly designed to prevent the very kind of injustice that must follow from a decision such as is here sought to have reviewed. The plan contemplates that all of the members shall be treated alike. It was not designed to mulct the members who performed their agreements in favor of those who failed to do so, simply because the agent or trustee representing all should, through ignorance or mistake, add fifteen cents to an assessment from which none received any benefit. This amount was paid to and retained by the State whose divided Supreme Court now says the State had no right to receive it.

Ethically, if not legally, it is startling to say that

after the State, through its Insurance Department, under whose jurisdiction insurance companies are placed, and whose construction of the statute, under the decisions, "while not conclusive upon the courts * * * is entitled to much weight" (State ex rel. Hayes v. St. Joseph R. R. Co., 135 Mo. l. c. 648; Ewing v. Vernon County, 216 Mo. 681), has required the tax to be paid, should then, through its judicial department, hold that the same payment of the same tax vitiated the assessment on which the State levied and collected the tax. It but indicates the extent to which the Court has found it necessary to go in order to place its decision upon a non-federal ground.

It is to be remembered that this is not an action against the company, as such, for some wrong committed by it. On the contrary, the suit is, in effect, a suit against the co-members of the insured. The certificate holders in this scheme of insurance insure each other; the losses are theirs; the funds collected are theirs; the company is but their agent to make the calculations, receive the collections and make the disbursements for them.

These facts, it seems to us, justify the conclusion that the whole plan contemplated the preservation of the rights of all the members by giving them relief in the event of an erroneous assessment by crediting their future assessments with any excess that might be collected from them.

Even if this was a suit against the company, as trustee, to recover for a loss occasioned by some negligence, it would not be held to a higher duty than that of exercising such care and diligence as an ordinarily prudent man would exercise in the management of his own affairs (King v. Talbot, 40 N. Y., l. c. 85, Jones' Appeal, 8 Watts & Sergeant, 143, 42 Am. Dec. 282; Taylor v. Hite, 61 Mo. 142), and it is not responsible for mere mistakes or errors of judgment (Taft v. Smith, 186 Mass. 31, 70 N. E. 1031; Pine v. White, 175 Mass. 585, 56 N. E. 967; Harkness v. Scammon, 48 Mo. App. 136). In the latter case the Court says:

> "In executing the powers derived from it (the trust instrument) he must use the same skill and prudence that a man of ordinary prudence would use on his own transactions under like circumstances. The law does not cast upon a trustee an extraordinary duty, nor demand extraordinary care, nor hold him liable for mere error of judgment. If he has exercised the care and judgment of ordinary, conscientious, prudent business men in their own affairs he will not be chargeable for his mere errors of judgment" (citing authorities).

Surely, therefore, it could not have been within the contemplation of the parties to this insurance plan that the good faith, but, perhaps, erroneous addition of fifteen cents to an assessment should im-

mediately terminate the obligation of a member to pay and authorize his beneficiary to recover whenever thereafter the defaulting insured shall have passed to the Great Beyond.

Under the plan, it was the privilege and duty of insured to challenge any assessment that was made, and to require reimbursement of any erroneous charge by a credit on his next succeeding assessment. It never was intended to so operate as to enable a member to terminate his obligation to pay, and yet enable his beneficiary to recover if, and whenever, it could be shown that some amount, large or small, had erroneously been added to the defaulted assessment.

3. The Connecticut Court, in the Dresser case, found, among other things, that (Rec., p. 22k):

> "In case of failure of any certificate holders to make payment in accordance with his agreement, his interest in said Safety Fund and all his claims thereon ceased."

The certificate provided that it was issued "In consideration of the representations, agreements and warranties made in the application * * * **and of the further payment of all mortality calls** * * * levied against the herein-named member" (Rec., p. 428). "That ninety days from the receipt * * * of satisfactory proofs * * * of the death of the herein-named member **while this certificate is in force,**

all the conditions hereof having been conformed to by the member * * * there shall be due and payable, **out of the Mortuary Fund, and not otherwise,** the indemnity of two thousand dollars" (Rec., p. 429).

The certificate provided further that (Rec., p. 433):

> "The member further agrees and accepts this certificate upon the express condition that, if either the Annual Dues, Mortality Calls or Safety Fund Deposit, as hereinbefore required, are not paid to said company on the day due, then this certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the certificate was in force, either from said company or the trustee of the Safety Fund; and that failure to make the stipulated payments shall absolutely terminate the member's liability therefor."

The Connecticut court undoubtedly had in mind when it embraced the above-quoted provision in its decree the conditions of the contract or certificate above quoted, and the fact that under other parts of its decree an excess would not vitiate an assessment, but would simply render the subsequent assessment subject to credit for such excess, while on the other hand, if a member failed to make payment, his liability therefor immediately terminated, so that the company was entirely without remedy to collect the as-

sessment or any part thereof. It was necessary, therefore, that the status of a nonpaying member be fixed.

The effect of this provision of the Connecticut decree was, therefore, that the Mortuary Fund of the Safety Fund Division was only subject to and liable for the payment of certificates matured by the deaths of the holders thereof in the event that all assessments had been paid by the holders thereof during their lifetime, since, as said by this Court in the Ibs case (237 U. S., l. c. 670), "failure to pay assessments would work a forfeiture"; but the trial court and the Supreme Court of Missouri held that the certificate in suit is payable out of the Mortuary Fund, notwithstanding the conceded and admitted fact that assessment or call 126 levied against the insured six months prior to his death was not paid.

In the instant case the insured not only failed to pay the mortality call, but he also failed to pay the quarterly dues required to be paid in advance, so that he came squarely within the conditions of the Connecticut decree and that provision of the certificate that a failure to pay **either** the **annual dues** or **mortality calls** shall render the certificate null and void.

We submit, therefore, that the state court failed to give full faith and credit to the Connecticut decrees in the Dresser case, contrary to and in violation of Article IV, Section 1 of the Constitution of the United States.

**The decision of the Supreme Court of Missouri in upholding the action of the trial court in permitting the recovery of penalty and attorneys' fees upon the facts in this case, deprives the defendant of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.**

Section 7068 of the Revised Statutes of Missouri, 1909, as amended by the Act of March 30, 1911 (Laws of Missouri, 1911, p. 282), reads as follows:

> "Section 7068. Damages, When Recoverable. In any action against any insurance company to recover the amount of any loss under a policy of * * * life * * * or other insurance, if it appear from the evidence that such company has vexatiously refused to pay such loss, the Court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not to exceed ten per cent on the amount of the loss, and a reasonable attorney's fee; and the Court shall enter judgment for the aggregate sum found in the verdict."

The only evidence on this issue offered on the trial of the case was the fact that plaintiff in error and petitioner had not paid the amount of the certificate, and the fact that its refusal to pay was based upon its interpretation of the contract that the failure of the insured to pay his assessment rendered his certificate unenforcible.

There was no evidence offered, either on the first

or second trial of this case, to show that the refusal of the company to pay the claim was vexatious. The vexatious nature of the defense was left to the jury to be inferred from the defense itself.

The defense on the first trial was that the insured had failed to pay the assessment against him, and, therefore, his certificate of insurance had been by its own terms forfeited. In avoidance of that defense the plaintiff contended that the assessment was void, because, taking into account what was in the Mortuary Fund, it was excessive.

The jury, under the instruction of the Court, not only found against the company on the main case, but found that the defense was vexatious, and so included the penalty in the verdict.

The Supreme Court of the State sustained that verdict and affirmed the judgment upon it.

The case was then brought to this Court, where, following the precedent of the Ibs case, the judgment of the State court was reversed. The distinctions made by the State Court between this and the Ibs case, this Court said, "seem to us unreal".

The defense made by the company being held by this Court to be good against the impeachment of it by the plaintiff, cannot be said to have been vexatious.

The case was remanded to the Supreme Court of Missouri "for further proceedings not inconsistent with the opinion of this Court".

The Supreme Court of the State sent the case back to the court of original jurisdiction which proceeded, over the objection of petitioner, to try the case de novo (Rec., pp. 23, 30).

The Circuit Court permitted an amendment to the reply which alleged that the unpaid assessment was void because it included 15 cents on account of a tax levied by the State, which tax was alleged to be illegal, and therefore should not have been included in the assessment.

The case was submitted to the jury upon this issue, and the jury, under peremptory instructions, found against the company upon the main question, and again found that the defense was vexatious.

And again the verdict of the jury that the refusal to pay was vexatious had nothing to rest upon except the defense itself. And the plaintiff did not discover the avoidance of the defense, although it grew out of known facts of record, until after trial through the State courts, and not until upon argument in this Court.

In addition to this consideration is the fact that the petitioner was not dealing with its own funds or on its own account, but with trust funds and as a trustee. It "kept the books, levied the assessments, deposited the collections in the Mortuary Fund, and paid claims therefrom as they matured. It was not

otherwise liable on the policies" (Ibs case, 237 U. S., l. c. 666). The company was a trustee of the fund (Ibs case, 237 U. S., l. c. 671), and it owed a duty to the beneficiaries (the members) to protect that fund against unjust demands. In the instant case the insured had failed to pay an assessment which under the terms of his certificate rendered the same void.

The company could not, and did not, gain anything for itself by its refusal to pay, because, under the terms of the certificate, payment would have been made out of the "Mortuary Fund, and not otherwise" (Rec., p. 429). Payment, however, of an unjustified claim might seriously affect the company, and as a trustee it was entitled to the judgment of a court as to whether, under the circumstances, there was liability. In cannot be said, therefore, that the company acted in bad faith in its refusal to pay.

Notwithstanding these facts the trial court refused to give either of the instructions requested by petitioner (instructions Nos. XXIII to XXVI; Rec., pp. 408, 409), set out at page 16 hereof, but gave the instruction requested by respondent, authorizing the jury to assess penalty and attorneys' fee if the jury found and believed from "all the facts and circumstance shown by the evidence that its refusal to pay was vexatious, that is, without reasonable cause" (Rec., p. 391), and this ruling was affirmed by the

State Supreme Court, and in support of such affirmance the Court referred to its former decision in this case, 269 Mo., l. c. 42, where it said:

> "The submission of the question of damages and attorneys' fees to the jury was proper under the rule stated by this court in Keller v. Home Insurance Co., 198 Mo. 440, and Brown v. Assurance Co., 45 Mo., l. c. 227, where it is said that:
>
> "'The whole question of vexatious refusal or delay is a matter of fact to be determined by the jury. They must make up their verdict on this issue by a general survey of all the facts and circumstances in the case; and if, upon full consideration, they conclude that the refusal was unjustifiable and vexatious, the law authorizes them to assess the damages. The statute will not admit of the construction contended for by the counsel for the plaintiff in error, that before damages are allowed it must be explicitly proved by the plaintiff that the delay or refusal was vexatious.'
>
> "We think that under this rule the evidence was ample to justify the submission of that question, and that the instruction of the Court properly defined the duty of the jury."

In the case of Bailey v. State of Alabama, 219 U. S. 219, 234, which involved the validity of a statute of Alabama, providing that the refusal or failure of a person who enters into a contract of service upon which he receives money or property to perform such service or refund the money shall be prima facie evidence of intent to defraud, this Court said:

> "It is no answer to say that the jury must find and here found that a fraudulent intent existed.

> The jury by their verdict cannot add to the facts before them. If nothing be shown but a mere breach of a contract of service and a mere failure to pay a debt, the jury have nothing else to go upon, and the evidence becomes nothing more because of their finding."

and this court reversed a conviction.

When the nature of the defense is the only evidence from which its character as being vexatious or not is to be inferred, then it is a question of law for the Court. Here is no dispute as to the fact. The company made a specific and definite defense. Does that prove that it was vexatiously made? If so, it must be that the defense was frivolous. Resting as it did upon conceded facts, to be vexatious it must be obviously without merit. It must be one repugnant to the lowest mind and unconscionable in its quality.

The Missouri Court of Appeals, in Stix v. Travelers Ins. Co., 175 Mo. App., l. c. 180, has said that "the fact that defendant declined to compensate the loss without litigation **is of itself evidence to prove the delay thereabout to be vexatious**".

If this is to be taken broadly and without taking into account the nature of the defense, it is opposed to the later and wholesome announcement made by the Supreme Court of Missouri, Division No. 2, in the case of Non-Royalty Shoe Co. v. Phoenix Ins. Co., 210 S. W. Rep., l. c. 42, which is as follows, viz.:

"We are convinced that a vexatious refusal to pay an insurance loss is not to be deduced from the mere fact that upon suit the verdict is adverse to the defendant (Patterson v. Insurance Co., 174 Mo. App. 44, 160 S. W. 59; Keller v. Insurance Co., 198 Mo. 440, 95 S. W. 983). If the fact of an adverse decision is to constitute the sole and decisive test, it would be fairly plain that this Court was in error when it held the statute to be constitutional; for it is only upon the fundamental ground of a vexatious refusal to pay that the penalty inflicted by the statute can be upheld. The defendant is to be allowed to entertain an honest difference of opinion as to its liability, or as to the extent of such liability under the contract of insurance, and to litigate that difference; otherwise, the provision of the statute is obviously so shot through with duress as to be invalid upon any view. It is from the very nature of the case, and from the protean form which the facts of the case assume, difficult, if not impossible, to frame any general rule for use in determining when a refusal to pay is vexatious and when it is not. Judge Trimble, of the Kansas City Court of Appeals, has announced a rule which commends itself to us so far as it goes, and it goes as far as it is wise or safe to go in announcing a rule to govern cases wherein the facts are as variant as we find them in insurance cases upon this question. This rule reads thus:

"'And while affirmative proof is not required to show vexatious refusal, yet the penalty should not be inflicted unless the evidence and circumstances show that such refusal was willful and **without reasonable cause** as the facts appeared to a reasonable and prudent man **before the trial**;

and merely because the judgment, after trial, is adverse to defendant's contention, is **no reason for inflicting the penalty**' (Patterson v. American Ins. Co., 174 Mo. App., loc. cit. 44, 160 S. W. 62)."

The contrariety of opinion by the Supreme Court of Missouri in the decision upon the former hearing of the case at bar (269 Mo., l. c. 42) and the case of Non-Royalty Shoe Co. v. Phoenix Ins. Co., 210 S. W. Rep., l. c. 42, last cited above, is undoubtedly due to the fact that the Supreme Court of Missouri is composed of two divisions, each having final jurisdiction of the cases decided by it.

The first decision was rendered by Division No. 1 while the last decision cited was by Division No. 2, the decision in the last case having been rendered several years later than the former.

The decision by Division No. 2 in the case of Non-Royalty Shoe Company v. Phoenix Insurance Company, had not been published when the instant case was argued in Division No. 1.

The law as laid down by Division No. 2 in the Non-Royalty Shoe case is plainly incompatible with the ruling in the instant case decided by Division No. 1, and is undoubtedly the law and should prevail upon the issue under discussion.

We respectfully submit that for the reasons herein stated the judgment of the Supreme Court of Missouri should be reversed.

F. W. LEHMANN,
JAMES C. JONES,
GEO. F. HAID,
Attorneys for Plaintiff in Error and Petitioner.

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IN THE

# SUPREME COURT OF THE UNITED STATES.

No. 161. OCTOBER TERM, 1920.

HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Error,
v.
CECILIA BLINCOE, Administratrix of the Estate of ROSA BARBER, Deceased,
Defendant in Error.

In Error to the Supreme Court of the State of Missouri.

## REPLY BRIEF OF PLAINTIFF IN ERROR AND PETITIONER.

JAMES C. JONES,
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ST. LOUIS LAW PRINTING CO., 415 N. Eighth St. Bell, Main 1819.

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## REPLY BRIEF OF PLAINTIFF IN ERROR AND PETITIONER.

### Taxes Paid State of Missouri.

Defendant in error states, at page 8 of brief, that the company failed to prove that the Superintendent of Insurance of Missouri ever levied or assessed a tax

on the assessments collected by the defendant in Missouri. What does the record show? Under date of March 29, 1910 (Rec., p. 363), the Superintendent of Insurance of Missouri wrote to the company, stating:

> "I hereby notify you that the amount of taxes due the State of Missouri from your company on premiums collected therein, in the year 1909, is two per cent on $171,504.39 (as shown by schedule) $3,430.09, which you will please remit to Hon. James Cowgill, State Treasurer, Jefferson City, Mo., on or before May 1st, 1910, and he will receipt you therefor."

The record shows (page 366) that the amount thus assessed upon was made up of the following items:

| | |
|---|---|
| Safety Fund, Men's | $112,527.91 |
| Safety Fund, Women's | 7,418.80 |
| Stipulated Premium | 46.76 |
| Stock Department | 51,510.92 |
| Total | $171,504.39 |

And the receipt of the Treasurer of the State (Rec., p. 370) shows the amount received is "in full for taxes due the State (on premiums collected in Missouri during the year ending December 31, 1909) **the same being assessed** against said company **by the Superintendent of the Insurance Department of the State,**" etc.

And the same procedure was followed with reference to the collections of the company made in Missouri during the year 1910 (Rec., pp. 371, 372).

And on cross-examination of the witness Collins W. Benton (Rec., p. 379) it was shown that a tax of two per cent was levied against the assessments collected upon the certificate in suit, from March 1, 1894, to December 1, 1909, and the tax so collected was paid to the State levying the same (Rec., p. 288, and bottom of p. 141, and pp. 261 and 291).

And Mr. M. D. Aber, one of the attorneys for the plaintiff at the trial, and who formerly had been Deputy Superintendent of the Insurance Department, was asked this question (Rec. p. 354):

> "Q. Mr. Aber, do you know what the departmental practice or the ruling of the Insurance Department of the State of Missouri was during that period, with reference to the application of the statutes of the State which require a tax of two per cent of all premiums collected by an insurance company licensed to do business in this State, with reference to **assessments**?"

With a great deal of reluctance, the witness finally answered (Rec., p. 357):

> "There was a two per cent tax levy, I think, pursuant to section 8706; I am not sure of the number of the section."

**Dues.**

Defendant in error states, at pages 8 and 9 of brief, that no dues were payable by assured until October, 1910.

The provision of the certificate is (Rec., p. 432) that:

> "The member agrees to pay to said company, for expenses, dues of three dollars per annum on each $1,000 indemnity, on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force; **or** by **pro rata** installments of the same, **in advance**, for periods of less than a year."

The record shows (Rec., p. 171) that from the inception of the certificate in suit in 1893 the insured paid his dues quarterly. The record also shows that the last dues he paid were paid December 6, 1909, for the quarter commencing December 1, 1909. Consequently, the assured paid his dues in advance only to the end of the quarter, which began December 1, 1909, and, therefore, another quarterly payment, in advance, became due March 1, 1910, the beginning of the quarter following the previous payment.

**Dividends.**

Defendant in error states (page 9 of brief) that the dividend to which assured was entitled was not taken into consideration in making the assessment.

The notice of assessment itself shows that the insured was entitled to a credit of $1.40 (Rec., p. 144), leaving a net amount to be paid of $13.19. The certificate provided that a semiannual division of the net interest received from the trustee of the Safety Fund (the Security Company) should be made *pro rata* among the holders of **certificates in force** "by applying the same **to the payment of their future dues and assessments**". Nowhere is there any provision that the net earnings of the Safety Fund shall first be deducted from the gross amount of the assessment against the entire membership, and then a division of the assessment shall be made among the members as the plaintiff contends ought to have been done; first, because the certificate contemplates it shall be credited on the **future** "dues **and** assessments" and not specifically in reduction of either the **dues** or the **assessments**; second, as the record shows, the assessment here involved was made and levied in the same manner as all previous calls (Rec., p. 344), and it is not shown that the insured ever objected to any of the calls, so there was a practical construction of this provision of the certificate covering a period of many years preceding the assessment in question.

Robinson v. United States, 13 Wall. 363;
Central Trust Co. v. Wabash, 34 Fed. 256;
Cook v. Foley, 152 Fed. 50.

## Source of Dividend.

Although counsel for defendant in error (who have been in this case from its inception) must have known the facts, as shown by the provisions of the certificate in suit, as well as by the record (pp. 183, 210, 252), that the dividend to be applied in reduction of the dues and assessment was the insured's *pro rata* share of the earnings of the Safety Fund in the hands of the Security Company, yet they quote from the opinion of the Supreme Court of Missouri an erroneous and wholly unsupported and unjustified statement to the effect that his *pro rata* dividend of $1.40 arose from a fund found by the Dresser decree "to have been illegally withheld from the policyholders on account of excessive fees exacted for the care of the safety fund", which fund counsel also well know is not in the hands of the defendant.

## Allegation as to Termination of Certificate.

At page 30 of their brief, counsel for defendant in error state that defendant "knew and now alleges in its answer and admits and contends that under the terms of the policy it was in force June 1, 1910". In the face of the allegations of the answer, such a statement is incomprehensible. At pages 9 and 10 of the record the defendant pleads the levy of the assessment involved and the steps taken to notify insured of the

assessment and dues payable by him March 1, 1910, and pleads that "by the terms and provisions of said policy and application the failure of said Frank Barber to pay said assessment, as well as his failure to pay said dues, terminated said certificate or policy".

And again, at page 12, the answer alleges:

> "Defendant alleges that although the said Frank Barber lived until the 5th day of June, 1910, or for nearly four months after the forfeiture of the policy, by reason of the non-payment of the assessment and dues in **March, 1910**, he at no time considered said certificate in force, but at all times acquiesced in the forfeiture thereof resulting from the non-payment of said mortality call or assessment, and abandoned all claims, rights or demands under said certificate or policy."

**Tax on Assessments.**

Defendant in error contends (at pages 4, 32 of Brief) that prior to the levy of the assessment in question, certain decisions of the State of Missouri had consistently held that the statute of Missouri providing for the collection of a tax of two per cent upon premiums of foreign insurance companies collected in the State, was not applicable to collections of assessments made by foreign companies doing business in Missouri without having qualified under the Assessment Statute of Missouri. What do those cases hold?

Northwestern Masonic Aid Ass'n v. Waddill, 138 Mo. 628, 638, was an action brought by a company doing business on the assessment plan, and licensed as such in the State of Missouri, as is shown in the opening paragraph of the opinion. It states:

> "This is an action by injunction instituted in the Circuit Court of the City of St. Louis, to restrain the defendant, superintendent of the Insurance Department of the State of Missouri, from assessing or levying a tax of two per cent upon premiums received by plaintiff, a corporation under the laws of the State of Illinois, doing business in the State of Missouri on the assessment plan, **and from canceling its license to do business**, because of its failure to pay such tax."

And at page 636 the Court distinctly holds that:

> "The plaintiff and the companies named in the petition are insurance companies on the assessment plan **as defined in this article**, and **under it**, doing business in this State."

It is evident, therefore, that the decision above referred to did not involve, and did not decide, the effect of the tax statute with reference to foreign companies doing an assessment business, **who had not qualified under the Missouri statute concerning insurance companies on the assessment plan.**

The case of Westerman v. Supreme Lodge Knights

of Pythias, 186 Mo. 670, involved the question as to whether the non-forfeiture statute of Missouri applied to a fraternal beneficiary association and the tax question was not involved, and besides, as shown by the Court at page 700, the defendant was licensed by Missouri to do business in that State as a fraternal society.

And in the case of Bankers' Life Co. v. Thorn, 186 S. W. 681, the opinion of the Missouri Supreme Court shows in its opening sentence that the company "was duly licensed to do business by the Insurance Department of Missouri during the whole period of its incorporation, and conducted an assessment insurance business here until the change in its charter" in 1911 from an assessment company to that of a legal reserve or level-premium company. So that even as to this kind of a company and notwithstanding the Waddill case, the Superintendent of Insurance had been and was exacting the two per cent tax on assessments it collected in Missouri. And, as will be observed, the nisi prius court decided in favor of the position of the Superintendent of Insurance, an appeal was prosecuted to the Supreme Court, the case was transferred to the Court en banc, and the latter reversed the trial court by a vote of 4 to 2, the seventh judge not sitting.

As we have already pointed out, neither of the three cases referred to had reference to a company not licensed to do business on the assessment plan in Missouri.

Considering that the Hartford Life Insurance Company was a foreign corporation doing business in Missouri upon the assessment plan, licensed to do life insurance business generally (i. e., under the general insurance laws of the State), but not licensed under the special act concerning assessment companies, for the very good reason that its form of organization and contract precluded it from obtaining such a license, how can it reasonably be charged with having wrongfully included this tax merely because it complied with the demands of the State, especially when the Supreme Court of the State had ruled (Schmidt v. Foresters, 228 Mo., l. c. 700) that companies which had not qualified under the assessment statute were subject to the **general insurance laws** of the State, and all of the adjudicated cases on the tax statute involved companies which had qualified under the assessment law.

And although counsel for defendant in error would have the company charged with negligence in its duties as a trustee because it was complying with a demand made upon it by a sovereign state under a statute which seemed to justify the demand, and notwithstanding the fact that from the time the testi-

mony was taken in this case in 1912, it has constantly appeared that a 15-cent tax was included in the assessment, yet the same counsel themselves during a period of five years from the filing of the complaint in this case in 1911 until they filed their brief on the former writ of error in this court, did not regard the inclusion of such tax as fatal to the assessment.

In fact there was no decision in Missouri holding that the tax was not applicable to the assessments of the defendant until the decision of the case of Young v. Hartford Life Insurance Co., 277 Mo. 694 (which case is still pending final determination in the state court), and which decision we firmly believe ought not to be sustained because it is an attempted evasion of the effect of the Dresser decree, as has been pointed out in the original brief for plaintiff in error in this case (pages 42 et seq.).

Besides this, the assessment involved in the Young case was levied in 1914, after the filing of the suit in the Chorn case, although prior to the decision in that case.

**As to the Effect of the Former Adjudication of the Tax Question by this Court.**

We have no doubt that it is the rule, as indicated by the cases cited by defendant in error (at page 17 et seq. of brief), that when a case before an Appellate Court contains several grounds justifying a reversal of the judgment, the Appellate Court need not dispose of each of the contentions, but may confine its consideration to any one of them and leave the others open and undecided.

It is quite different, however, where the case to be reviewed is correctly decided, but the reason given in support of the decision is erroneous. In such case if the judgment is right, the reviewing Court will uphold it, notwithstanding a wrong reason for such judgment was given by the Court which entered the judgment. If the reviewing Court does not sustain the judgment, there can be but one conclusion, i. e., that the reason assigned for sustaining it is not valid, and before this result could have been reached, it must necessarily have considered and decided that question.

That is exactly what occurred here. When this case was here on the first writ of error, it was contended by the defendant in error that, although this Court should conclude that the decision of the Supreme Court of Missouri was placed upon the wrong ground,

yet, since the record showed the inclusion of the tax and since such inclusion rendered the assessment illegal, that fact necessitated an affirmance of the judgment under review. Undoubtedly, if the inclusion of that tax vitiated the assessment, the conclusion stated was correct.

This Court did not accept the view thus insisted upon by the defendant in error, and, therefore, must necessarily have concluded that the inclusion of the tax did not vitiate the assessment, otherwise it would of necessity have affirmed the decision.

True, this Court did not discuss this question or give any reason for ignoring it, nor was it necessary for it to do so, because it is not incumbent upon an Appellate Court to specifically pass upon every point raised by counsel. It is prefectly obvious that in a case such as this, where the issues are so restricted that the point made, if sound, must necessarily necessitate an affirmance of the judgment appealed from, that if the Court decides the case contrary to a view so presented by counsel, it must be because it found his view untenable, otherwise it would not have so decided the case.

Nor was it essential that this Court state why it found that view untenable, whether it was.

(1) Because it could not be said that in 1910 the assessments collected by defendant in Missouri were not taxable, or

(2) Because the amount of the tax (fifteen cents) was so small that the Court would not permit its inclusion to excuse the insured from paying all future assessments and thereby mulct his co-members who were in the same position as he was, and who would not have profited by the collection of the tax from insured, or

(3) Because under the decision in the Dresser case it was held that an excess in an assessment, if any, should not vitiate or invalidate an assessment, but should simply render the succeeding assessment subject to credit for such excess.

**Assessments in Course of Collection.**

Defendant in error, on page 31 of brief, states erroneously that the defendant had extended the time of payment of $185,000 of assessments. There is no foundation for this statement. The fact is, the State requires the reports of life insurance companies to exhibit their assets and liabilities. Every death loss is a liability and must be shown as such. The old-line companies have their invested assets, i. e., reserves, while assessment companies have only their power of assessment. As to assessment companies, therefore, against their losses, as soon as they are incurred, there is, as a corresponding asset, i. e., the assessment to be made on account of such losses, and the one balances the other. This is explained by Mr.

Lawrence on page 300 of the record, where he says that death claims "were charged as a liability in our statements to the department, but a corresponding amount for those other death claims was put in the assets under the head, 'Premiums in course of collection, Safety Fund Department' ". This is both proper and necessary as a matter of accounting, for otherwise an assessment company would always appear without assets to offset its liabilities.

Respectfully submitted,

JAMES C. JONES,
F. W. LEHMANN,
GEO. F. HAID,

Attorneys for Plaintiff in Error.

# DEFENDANT'S

# BRIEF

DEC 14 1920
JAMES D. MAHER,
CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Error,
v.
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Defendant in Error.

No. 161.

In Error to the Supreme Court of the State of Missouri.

## BRIEF OF DEFENDANT IN ERROR.

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IN THE

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OCTOBER TERM, 1920.

HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Error,
v.
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Defendant in Error.
No. 161.

In Error to the Supreme Court of the State of Missouri.

## BRIEF OF DEFENDANT IN ERROR.

## STATEMENT OF THE CASE.

This case was in this Court before and is reported in 245 U. S. 146. This Court reversed the judgment of the Supreme Court of Missouri on the ground, as stated in its opinion, that the decision of the Supreme

Court of Missouri failed to give full faith and credit to a certain Connecticut decree in a case known and called "The Dresser Case". The cause was reversed and remanded by this Court to the Supreme Court of Missouri to be proceeded with not inconsistent with its opinion. In obedience to this mandate, the Supreme Court of Missouri reversed and remanded the cause generally for a new trial and sent it down to circuit to be tried anew. After the cause was remanded for a new trial the defendant amended its answer, pleading a new and additional defense. To this answer plaintiff filed a reply which pleaded certain new affirmative matters in reply, namely, that the assessment in question was excessive and void because it contained the sum of 2 per cent thereof for taxes which were not required by the State of Missouri, and that defendant had wrongfully collected from assured the sum of 2 per cent on each and every assessment on said policy from the date thereof to the time of his death, amounting to more than the amount of the alleged assessment, for which sum defendant was indebted to the assured at the time of the alleged assessment, and that by reason thereof defendant could not forfeit the policy for failure to pay the same (Rec., p. 25). The issues were reframed in the trial court by both plaintiff and defendant under the provisions of the Missouri code.

At the second trial the Connecticut record was admitted in evidence and full faith and credit was given to the Dresser decree and the mandate of this Court was followed as to all matters decided by it. The decision of the case turned at the trial on purely a state question of general law and resulted in a verdict and judgment for the plaintiff for the full amount of the policy sued upon and interest with damages and attorneys' fees for vexatious refusal to pay, as authorized by the Missouri statute.

The defendant appealed the cause to the Supreme Court of Missouri, which affirmed the judgment. The decision of the Supreme Court of Missouri is not in conflict with the prior decision of this Court, as shown on its face. But the Supreme Court of Missouri, in its second decision, followed the opinion of this Court on all questions decided by it when the case was here before. The Supreme Court of Missouri bases its decision wholly upon a question of general law, namely, that because the assessment, for the failure to pay which the policy was canceled by the defendant prior to the death of the assured, was excessive and illegal and void because it included an alleged 2 per cent tax upon the amount thereof attempted to be collected by the defendant from the assured, in advance, in order that defendant might pay it to the State of Missouri, and because the defendant had illegally exacted of assured this 2 per cent tax on all

prior assessments, which amounted to $11.93, a sum sufficient to pay the assessment less the dividend due him, and was indebted in that amount to assured at the time of the assessment and at the time it attempted to cancel the policy and that this indebtedness should have been applied to its payment.

The Supreme Court of Missouri held that the State of Missouri had no right to exact such a tax under the Missouri statute, a question which had been decided by that Court as early as April 3, 1897, in the case of Northwestern Masonic Aid Association v. Waddill, 138 Mo. 628, which was offered in evidence by the plaintiff in error in this case, and from which it appears that the learned counsel now representing the plaintiff in error in this Court, represented the prevailing party in that case and were instrumental in getting such a construction placed upon the Missouri statute. That case has been consistently followed since by that Court in three decisions: Westerman v. Supreme Lodge, 196 Mo. 67, decided June 1, 1906; Bankers Life Co. v. Chorn, 186 S. W. 681, decided June 2, 1916, and Young v. Hartford Life Insurance Co., 277 Mo. 694, decided April 7, 1919.

While there was some evidence in the former record of this case tending to show that this illegal tax had been included in the assessment in question, it was not raised as an issue in either the trial court or in the Supreme Court of Missouri when this case was

first before it; the plaintiff did not plead it and it was not considered or decided either by the trial court or the Supreme Court of Missouri.

When the case was here before defendant in error did make the point in its brief that the assessment in question did include such a tax which was not required by the laws of the State of Missouri and stated: "The Supreme Court of Missouri has not put its decision upon that ground, but defendant in error under the authorities may now assign in this Court another ground not considered by the Supreme Court of Missouri, and if it is found by this Court to be sound law and the judgment of the Supreme Court of Missouri is right, it will not be reversed on writ of error."

In support of this contention, two Missouri cases holding the tax illegal were cited. But this Court refused to consider or notice this assignment or to decide it when the case was here before. After this cause was remanded by this Court to the Supreme Court of Missouri and by the Supreme Court of Missouri to the Circuit Court for a new trial and after the defendant had amended its pleading, pleading new and additional defenses, the plaintiff in her reply, as she had a right to do under the Missouri practice, pleaded specifically that the assessment in question included this illegal tax and that the defendant had wrongfully exacted a 2 per cent tax on all prior as-

sessments and was indebted to the assured at the time of the assessment in question in amount sufficient to pay the same and for that reason that the assessment was illegal and void. The defendant took depositions in an effort to meet this new issue and attempted to show that such a tax had been exacted by the State of Missouri of defendant and took the depositions of Collins W. Benton in Hartford, Connecticut, and offered in evidence the receipt of the Treasurer of the State of Missouri to the Hartford Life Insurance Company for $3,430.09 for taxes for the year ending December 31, 1909 (Rec., p. 370). This new evidence also tended to show that the 2 per cent tax on the assessment in question was covered by and included in that payment to the State of Missouri and that this 2 per cent tax was collected in advance of payments to the State of Missouri on the theory that it would thereafter exact this tax from the Company and that in this particular instance the tax was attempted to be collected in advance from assured. That is, that the tax collected during the year would not be actually paid out by the company until the end of the year (Rec., p. 381).

This new and additional evidence further showed that the defendant had collected from assured 2 per cent on all prior assessments on the policy in suit in advance since March 1, 1894 (Rec., pp. 379-381).

These assessments amounted in all to $596.51, 2 per cent on which amounts to $11.93.

The plaintiff's evidence in chief at the second trial was about the same as before. She offered in evidence the policy sued on, together with a letter from defendant dated July 8, 1910, in which the defendant denied liability on the policy "for non-payment of call due March 1, 1910" (Rec., p. 52).

She then offered in evidence the reasonable value of attorney's fees and closed her case.

The defendant, to carry the burden placed upon it by the law of the State of Missouri to show a forfeiture for failure to pay an assessment and that such assessment was legally made and not excessive and that notice was given assured as provided in the policy and that he failed to pay the assessment, offered all the evidence offered by it at the former trial, and also the new evidence above referred to.

It also offered a resolution of its board of directors giving to its executive officers discretionary general power to transact on behalf of the company all lawful business of every kind. This was not in evidence before (Rec., p. 348). Also a letter from its secretary to one of the men in the office setting out Call No. 126 giving the number of deaths and the amount of call and the ratios (Rec., p. 345).

While the notice of assessment did not show upon

its face, defendant's evidence showed that assessment 126 which it claims was made against assured was excessive and void and a copy of the notice sent to him by it is as follows:

"For mortality call.....$13.09
For quarterly dues to June next..... 1.50

$14.95

Credit $.....
Dividend to be applied if payment be made 1.40

$15.19
(Rec., p. 144)."

Defendant's evidence further showed that it included a 2 per cent tax on the amount thereof (Rec., p. 146).

The defendant's amended answer, upon which the case was tried the second time, also showed that this tax was included in this assessment (Rec., p. 9). The defendant absolutely failed to prove that the Superintendent of Insurance ever levied or assessed any tax whatever on these assessments. Defendant's evidence also showed conclusively that it had received as interest on funds, to which assured had contributed, which defendant had set apart to assured as a dividend, the sum of $1.40, which under the provisions of the policy should be applied to the payment of dues. Under the provisions of the policy no dues were pay-

able by assured until October, 1910, unless the assured wished to pay them "by pro rata installments, in advance for periods of less than a year" (Rec., p. 423). Under the terms of the policy, a holder who had contributed five years prior to the date of a semiannual dividend, such dividend should be applied to his future dues and assessments (Rec., p. 422). The defendant's evidence conclusively showed that assured had contributed to the fund five years prior to the semiannual dividend in question and that the dividend had been declared by the defendant to the assured (Rec., p. 183).

From the foregoing, it appears conclusively that under the terms of the policy the assured owed no dues at the time of the alleged forfeiture; that the dividend of $1.40 should have been applied in the reduction of the assessment; that this was not done by the defendant and this dividend was not taken into consideration in making the alleged assessment, but the assessment was figured at the ratio of $4.20 per thousand without crediting the dividend to assured in the reduction thereof. In the notice of assessment, however, the dividend was placed at the bottom thereof with the statement "dividend to be applied if payment be made, $1.40" (Rec., p. 144).

The defendant also offered in evidence a copy of its record, which shows that the policy in question was canceled by it March 31, 1910 (Rec., p. 156).

The policy provides that if a tax is required by the State, "then the mortality call hereon shall be determined so as to cover such tax" (Rec., p. 424).

The Missouri statutes, section 7099, relied upon by the defendant, only provides that "**premiums**" may be assessed by the Superintendent of Insurance, as before stated. The Supreme Court of Missouri held, as early as April 3, 1897, in the case of Northwestern Masonic Aid Association v. Waddill, 138 Mo. 628, offered in evidence by plaintiff in error, that this statute did not include assessments such as the one in question and that under it they were not taxable.

From the foregoing, it conclusively appears that the assessment in question was not calculated, computed or levied in accordance with the terms of the policy. It was for a larger sum than that provided for in the policy if computed by the age of assured and the graduated mortality ratio table on the back of the policy which is a part of it. It included a 2 per cent tax on the amount thereof which was not required by the laws of the State of Missouri. It included quarterly dues in the sum of $1.50 which were not due and payable. It only permitted assured to take advantage of his dividend of $1.40 which had been set apart for him and belonged to him if he paid the whole assessment and dues which constituted a single demand upon him to pay the full amount. The company was indebted to him at the time for sums illegally exacted

from him in an amount more than sufficient to pay the real assessment, less his dividend.

Defendant's charter was offered in evidence and showed that it was a foreign insurance corporation, and the defendant offered in evidence certificates of authority granted to it to do business in the State of Missouri covering the years 1909-1910 (Rec., pp. 387-389). The evidence showed that during the period from the issuance of the policy to the death of the assured it was engaged in the business of soliciting and writing life insurance for profit and issued policies in different forms providing for different kinds or classes of insurance. Its contention here that it had never accepted the statute of Missouri and was not under its provisions and was doing this assessment business without a license is disposed of by the opinion in this case and is purely a question of general state law, the decision of which ought to be left to the courts in Missouri.

# POINTS AND AUTHORITIES.

## I.

**Only the questions decided by this Court when this case was here before became the law of the case. That decision cannot be extended to matters not decided.**

In re Potts, 166 U. S. 263;
Mutual Life Insurance Co. v. Hill, 193 U. S. 551;
Ex parte Union Steamboat Co., 178 U. S. 317;
In re Sanford Fork Tool Co., 160 U. S. 247;
Barney v. Winona, Etc., R. R. Co., 117 U. S. 228;
Tanizer v. Railroad, 191 Fed. 543, l. c. 547;
Gwin v. Waggoner, 116 Mo. 143, l. c. 151;
Howell v. Sherwood, 242 Mo. 513;
Wilcox v. Phillips, 260 Mo. 664.

**By reversing this cause on one ground this Court did not consider and decide all the questions presented or which might arise at a further trial thereof.**

Mutual Life Insurance Co. v. Hill, 193 U. S. 551.

## II.

**The Connecticut decree in the Dresser case only decided that the company had the right to retain**

and have on hand for the purpose of paying future death losses a sum equal to one assessment.

Hartford Life Insurance Co. v. Ibs, 237 U. S. 662;

Hartford Life Insurance Co. v. Barber, 245 U. S. 146.

III.

The dues for which the company attempted to cancel the policy in March, 1910, were not due and payable until October, 1910.

Barber v. Hartford Life Insurance Co., 269 Mo., l. c. 40-41.

IV.

Section 7068 of the Revised Statutes of Missouri, 1909, as amended, providing for damages and attorney's fees, for vexatious refusal to pay a policy of life insurance is constitutional, and the decision of the Supreme Court of Missouri does not deprive the defendant of its property without due process of law.

Farmer, Etc., Ins. Co. v. Dobney, 189 U. S. 301;

Fraternal Mystic Circle v. Snyder, 227 U. S. 497;

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123;

Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308;

Iowa Life Ins. Co. v. Lewis, 187 U. S. 335;
Williams v. Liverpool, Etc., Ins. Co., 141 Fed. 54;
Barber v. Hartford Life Ins. Co., 269 Mo. 21;
Keller v. Home Life Ins. Co., 198 Mo. 440.

V.

Questions of fact are not reviewable by this Court on a writ of error to a state court.

Western Union Tel. Co. v. Call Pub. Co., 181 U. S. 92;
Keokuk, Etc., Bridge Co. v. Illinois, 175 U. S. 626;
Atchison, Etc., R. Co. v. Matthews, 174 U. S. 96;
Chicago, Etc., R. Co. v. Chicago, 166 U. S. 226;
Egan v. Hart, 165 U. S. 188;
Dower v. Richards, 151 U. S. 658.

## ARGUMENT.

This Court reversed the judgment of the Supreme Court of Missouri in this cause for the sole reason that full faith and credit was not given to the Connecticut record. In its opinion it states: "We are of the opinion that full faith and credit was not given to the Connecticut record and that for that reason the present judgment must be reversed" This Court further held that this error inhered in an instruction given by the trial court to the jury and for that reason this cause had to go back to be retried. This Court clearly recognized that there were issues of fact left open in the case and in its mandate the judgment was reversed and the cause was remanded to the Supreme Court of Missouri to be proceeded with not inconsistent with the opinion of this Court. It did not hold that the assessment in question was legal and valid. While it stated in the opinion: "It is obvious on the evidence that this assessment was levied in the usual way, adopted by the company and tacitly sanctioned by the Connecticut judgment", this had reference solely to the question of the company being permitted to have the amount of one assessment, $300,000, on hand to pay future death claims, and for that reason the assessment was not excessive. It was further stated

by this Court in its opinion that a jury would have been justified at least in finding that the assessment was made by the directors within the meaning of the charter, although it did not appear that the directors went over the figures of the officers who made it up and voted it specifically. These observations, of course, were made as the evidence stood in the former record. This matter was submitted to the jury at the former trial as a question of fact, and of course, this Court could not and did not, as stated in its opinion, reverse the case on that ground. But at the second trial the defendant proved clearly that the assessment in question was not made by the board of directors at all, but that they had delegated this power to two of the company's executive officers.

The defendant clearly recognized this and at the second trial amended its answer and raised new issues and took depositions and offered new and additional evidence. Plaintiff also amended her pleadings and raised a new issue and it was upon this new issue that the decisions of the Supreme Court of Missouri is based.

The rule adopted by this Court where a cause has been reversed and remanded without specific direction to enter any particular judgment is the same as the rule adopted by the Supreme Court of Missouri, namely, that the trial court may consider and decide any matters left open by the mandate

of the Appellate Court (In re Potts, 166 U. S. 263). The Supreme Court of Missouri has also adopted the same rule adopted by this Court, that where a cause has been reversed and remanded and returned to the trial court for further proceeding, the trial court may permit the pleading to be amended and new and additional evidence heard, and decide all questions left open and that the rule is that a judgment of reversal is not necessarily an adjudication by the Appellate Court of any other than the questions in terms discussed and decided.

In Mutual Life Insurance Company v. Hill, 193 U. S. 551, a case where the decision was based upon the averments of the pleadings and these pleadings were amended after judgmnt was reversed and the case remanded to the trial court, it was said:

> "Clearly the contention of the plaintiff is not sustainable. Where a cause is presented to an Appellate Court it is not obliged to consider and decide all questions then suggested or which may be supposed to likely arise in the further progress of the litigation. If it finds in one respect an error has been committed, so substantial as to require a reversal of the judgment, it may order a reversal without entering into any inquiry or determination of other questions. * * * It is impossible to foretell what shape the second trial may take or what questions may then be presented. **Hence the rule is that a judgment of reversal is not necessarily an adjudication by the**

**Appellate Court of any other than the questions in terms discussed and decided."**

To the same effect are the cases of Tanizer v. The Railroad, 191 Fed. 543, l. c. 547; Patillo v. Allen-West Commission Co., 108 Fed. 723.

In the last case above mentioned, Judge Thayer said:

> "While the rule that an adjudication by an appellate tribunal becomes the law of the case, on all subsequent trial, is a wholesome one which should be enforced, yet it should be confined to questions that were considered and decided and not extended to dicta or intimations contained in an opinion which may be thought to foreshadow the views of the Court on other questions."

In Ex parte Union Steamboat Company, 178 U. S. 317, it is said:

> "The inferior court is justified in considering and deciding any question left open by the mandate and opinion of this Court, and its decision upon such matter can only be reviewed upon a new appeal to the proper court."

To the same effect is the case of Re Sanford Fork Tool Co., 160 U. S. 247. In that case it is said that the trial court, after remand, might allow amendment of the pleadings and try and decide all questions left open by the decision of the Appellate Court.

In Barney v. Winon, Etc., Railroad Co., 117 U. S.

228, it was held that the rule that what was decided on first appeal is not open to reconsideration in the same case, on the second appeal, does not apply to expressions of opinion on matter, the disposition of which was not necessary to a decision.

In Hodges v. Easton, 106 U. S. 408, where it was asked that the Court upon a reversal of a case which had been tried by a jury, that the issues on a retrial be restricted to the issues of the first trial, the Supreme Court of the United States refused to so do, for the reason that when a cause tried by a jury was not submitted to it as required by law, the Appellate Court had no authority to so restrict the issues on a second trial. Judge Harlan said:

> **"There is then no alternative but to reverse the judgment with directions that a new trial be had upon all the material issues of fact."**

This was the exact situation here. This Court had held that this cause had been submitted improperly to a jury in the instructions of the trial court, and reversed the judgment of the Supreme Court of Missouri and remanded the cause to that court to be proceeded with not inconsistent with its opinion. In obedience to this mandate, the Supreme Court of Missouri reversed the judgment of the trial court and remanded this cause to that court generally for new trial, without specific directions. Clearly the trial

court had a right to decide all questions arising in the case, which had not been specifically decided by this Court, and that by deciding some of the questions in said cause, this Court did not decide any other questions. This is also the rule in Missouri (Gwinn v. Waggoner, 116 Mo., l. c. 551; Howell v. Sherwood, 242 Mo. 513).

Finally, the only question which can arise in this case, as to the judgment and proceedings of the trial court, and the decision of the Supreme Court of Missouri, is whether or not its judgment is inconsistent with the opinion of the Supreme Court of the United States.

In Steinfeld v. Zeckendorf, 239 U. S. 24, it is held that where the Supreme Court reverses a judgment and remands the cause, "for such further proceedings as may not be inconsistent with the opinion of this Court," the only question is whether or not the judgment rendered below is inconsistent with such opinion and when it is not, there is no reason for disturbing it.

Therefore, even if all the questions now presented were in the former record and were presented to this Court, which we deny, clearly it did not decide them and its decision cannot be extended to matters not decided by it. By deciding this cause and reversing it upon one ground, this Court did not and cannot be

held to have considered and decided all the questions presented or which might further arise at a new trial. Only such questions as were passed upon by this Court became the law of the case (In re Potts, 166 U. S. 263; Mutual Life Ins. Co. v. Hill, 193 U. S. 551; ex parte Union Steamboat Co., 178 U. S. 317; Gwinn v. Waggoner, 116 Mo., l. c. 151; Howell v. Sherwood, 242 Mo. 513). And all the questions arising at the second trial and presented to the trial court and to the Supreme Court of Missouri were not passed upon and decided by this Court and as to some of the issues at the former trial the evidence was entirely different at the second trial. The decision of this Court is not res adjudicata as to questions it did not decide. The cases cited by plaintiff in error on this question do not sustain it.

In the case of United States Trust Company v. New Mexico, 183 U. S. 535, New Mexico filed an intervening petition claiming a lien for certain taxes. The trial court dismissed the petition because "the matters and things therein set up were not sufficient to entitle said intervening petitioner to the relief sought by its petition." On appeal, the Supreme Court of New Mexico affirmed the action of the trial court. The Supreme Court of the United States reversed the decision of the Supreme Court of New Mexico and remanded the cause for further proceedings. The

Court, after remand, found that New Mexico was entitled only to a lien on a portion of the railroad, instead of upon all of it. The Supreme Court of New Mexico modified the decree and reduced the amount found to be due. On the second appeal the Supreme Court of the United States held that in its prior decision it had adjudicated that the petition presented a valid claim, "and is conclusive of such prima facie validity, not merely against objections which were in fact made, but also against those which might have been made". Mr. Justice Brewer in deciding the case said: "We start in this inquiry then with the adjudicated fact that upon the face of the intervening petition was presented a valid claim for the taxes therein specified." The case went upon a certified statement of facts and the Court held this statement of facts insufficient as far as the railroad company was concerned. As to New Mexico, the Supreme Court took up and disposed of a number of questions raised by it which had not been presented or decided on the prior appeal. Instead of being authority for plaintiff in error this case is authority for respondent.

Neither is the case of Chaffin v. Taylor, 116 U. S. 567, authority here. In that case the Court held:

> "The rejoinder, which the Circuit Court permitted the defendant to file, tendered no issue of fact, but one of law merely, and every question of

law in the case had been covered by the former judgment of this Court in this case."

The Court further said:

"The rejoinder allowed to be filed after the judgment of reversal therefore sought again to draw in question the very matter which had been already finally adjudicated by that Court in the same case. It did not deny the genuineness of the coupons nor the fact of tender and the question of law broadly decided on the demurrer to the replication necessarily involved every defense arising as a matter of law that could be made upon any existing acts of the general assembly of Virginia."

The Court further held that the statute sought to be plead at the second trial had also been passed upon by the Supreme Court of the United States and that it did not give the party any additional right. Clearly this case is not authority for appellant's contention here. That case cites and approves the case of Supervisors v. Kennicot, 94 U. S. 498, as the rule of decision as to the law of the case, prevailing in the decisions of the Supreme Court of the United States. This latter case holds that questions decided are no longer open on a second appeal. "Such subsequent appeal brings up for consideration only the proceedings of the Circuit Court after the mandate of this Court."

The case of Tyler v. Magwin, 17 Wall., l. c. 283, announces the same doctrine. This doctrine in no way conflicts with the contention of defendant in error in this case, and is clearly the same rule adopted by the Missouri Court.

Neither is the case of Pitkin v. Shacklett, 117 Mo. 547, in point. In that case the cause was reversed and remanded by the Court with directions to the Circuit Court to enter in favor of plaintiffs a certain judgment, and, of course, it was a final adjudication of all matters on the question, which either were raised or might have been raised. The only thing to be done by the trial court was to make a calculation of the penalties and interest required by the statute, and find the proportion thereof chargeable to the land in question. The trial court did this and refused to permit the defendant to raise any question as to the validity of the levy, for the reason that that question had been fully adjudicated and was res adjudicata. We find no fault with this decision. We do not contend that where a cause has been adjudicated in an appellate court and is reversed and remanded to a trial court, with directions to do a particular thing, that the trial court can do other than follow strictly the mandate of the appellate court.

The Connecticut decree was offered in evidence and received without objection, and the same was fully considered by the trial court and the Supreme Court

of Missouri, and full faith and credit was given to it. The action of the trial court in giving the peremptory instruction to find for the plaintiff, was with full compliance with that decree, for it was upon other matters after having given the Connecticut decree full faith and credit, that the trial court decided that under the pleadings and all the evidence the plaintiff must recover. This very question was decided by the Supreme Court of Missouri in the case of Young v. Hartford Life Insurance Company, 277 Mo. 694.

II.

The Connecticut decree in the Dresser case is set out in full in the record. The portion pertinent here will be found on page 22, wherein it was adjudged that "the company was entitled to hold the amount of one quarterly assessment for the settlement of death claims which might arise before the amount of the assessment could be realized". The Court did not undertake to determine and did not determine that each and every assessment made as to each individual policyholder up to that time were legal and valid. Such a decree was not only not rendered, but was not within the purview of the pleading or the evidence in that case. Neither did that Court in that case hold that the defendant company might include an illegal tax in any of its assessments. Such a question was not raised, considered or decided. If

such question had been decided by the Court, it would not have been within the purview of the pleading or the evidence, nor would the Court have had jurisdiction to render any such a decree in a class suit because it was not a matter in which all the policyholders were interested and a suit by one for the benefit of another who did not join in such suit would not have been bound thereby. Neither did this Court decide any such question either in the Ibs case (237 U. S. 662), or when this case was here before (245 U. S. 146). This Court, however, did decide in those cases that defendant had the right under that decree to retain the amount of one assessment with which to pay future death claims. That is all that it did decide.

III.

The dues under the policy were not payable until October, 1910, following the alleged forfeiture of the policy in March, 1910. When this case was before the Supreme Court of Missouri before on this question it was said (269 Mo. 40-41):

> "IV. The appellant in argument contends that the policy was properly forfeited for non-payment of ten cents, a balance which it claims to have been due on the following figures. It charged Mr. Barber one-fourth of his annual dues under the policy for expenses—$1.50. The Court in the Dresser decree had ordered that $40,046.36 ille-

gally withheld from the policyholders on account of excessive fees exacted for the care of the safety fund should be returned to them. On this account $1.40 was credited as the share running to this policy, leaving ten cents due in addition to the assessment for mortuary purposes. The policy, in this respect, runs as follows:

"'In consideration of * * * $3 per annum on each $1,000 of the indemnity herein provided for, expense dues, to be paid as hereinafter conditioned.'

"The policy is dated September 4, 1903. On the next page are the 'conditions', which, with respect to this payment, are as follows:

"'The member agrees to pay to said company, for expenses, dues of $3 per annum on each $1,000 indemnity on the first day of the month after date of issue hereof, and at every anniversary thereafter, so long as this certificate shall remain in force; or by pro rata installments of the same, in advance, for periods of less than a year.'

"We have searched this voluminous record carefully for any evidence of any other arrangement. This was by the terms of the policy due on October 1st of each year and we see nothing in the provisions we have quoted which gave the appellant the right at its own election, and without the consent of the policyholders, to make it otherwise payable. The forfeiture cannot stand on this ten cents."

Under the contract the defendant had no right to forfeit the policy for failure to pay dues before October, 1910.

IV.

**Section 7068 of the Revised Statutes of Missouri, 1909, providing for damages and attorney's fees for vexatious refusal to pay the loss under a policy of insurance, in no way violates the Federal Constitution.**

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123;
Fidelity Mutual Life Assn. v. Mettler, 185 U. S. 308;
Iowa Life Ins. Co. v. Lewis, 187 U. S. 335;
Farmers, Etc., Ins. Co. v. Dobney, 189 U. S. 301;
Fraternal Mystic Circle v. Snyder, 227 U. S. 497;
Williamson v. Liverpool, Etc., Ins. Co., 141 Fed. 54;
Keller v. Home Life Ins. Co., 198 Mo. 440.

This question has been decided so often by this Court, under similar statutes, that plaintiff in error's contention is so conclusively established to be without merit that it does not even give color for a federal question.

The plaintiff in error does not contend that the statute itself makes the mere refusal to pay sufficient evidence of bad faith so as to justify the recovery of the penalties therein provided, but contends that the St. Louis Court of Appeals, in Stix v. Travelers Ins. Co., 175 Mo. App. 171, have so held. This is not true. But the St. Louis Court of Appeals is an appellate

court of limited jurisdiction, and is bound to follow the decisions of the Supreme Court of Missouri, and has no jurisdiction of constitutional questions.

The courts of Missouri under this statute, since the case of Brown v. Ry. Passenger Assurance Co., 45 Mo., l. c. 227, have held that "the whole question of vexatious refusal or delay is a matter of fact to be determined by the jury. They must make up their verdict on this issue by a general survey of all the facts and circumstances in the case; and if, upon a full consideration, they conclude that the refusal was unjustifiable and vexatious, the law authorizes them to assess the damages. The statute will not admit of the construction contended for by the counsel for the plaintiff in error, that before damages are allowed it must be explicitly proved by the plaintiff that the delay or refusal was vexatious."

Keller v. Home Life Ins. Co., 198 Mo., l. c. 460-461;
Stix v. Travelers Ins. Co., 175 Mo. App. 171.

Plaintiff in error contends that there was no evidence in this case tending to prove a vexatious refusal to pay on its part. But there was evidence from which the jury might infer a vexatious refusal to pay upon the consideration of all the facts and circumstances in evidence.

The defendant canceled the policy in question on

its books March 31, 1910, when it knew and now alleges in its answer and admits and contends that under the terms of the policy, it was in force June 1, 1910, nine days before assured's death. Defendant also sent assured a notice on March 10th, stating that unless the assessment was paid by March 20th the policy would be canceled. In this notice, it was stated that assured would be charged an extra 50 cents under the Massachusetts law (whatever it is), and also would be charged another 50 cents to have the policy "unconditionally reinstated", and that after March 20th, 1910, the defendant reserved the right to require "a medical examination as a condition of reinstatement" (Rec., pp. 160, 161).

All this in the face of defendant's contention at the second trial that the policy was in force up to June 1st, 1910, and in the face of the provision of the policy, upon which the defendant sought to sustain a forfeiture, at the second trial. These acts and demands were in violation of the terms of the policy and were unlawful, and we can see no excuse for them, and none is offered.

In addition, defendant attempted to collect from assured an unlawful and illegal and excessive assessment which charged him with taxes in advance, and which it was not shown were ever levied or assessed by the State of Missouri, and which, under the law of the State, it had no right to assess, and did not

"require" to be paid. It failed to take into consideration in making the assessment a dividend of $1.40 earned upon assured's money which had been set apart to him by defendant. It made a full assessment in spite of it, and in spite of the fact that it was indebted to him in an amount more than sufficient to pay his assessment which, in law, it was bound to apply towards its payment. It charged assured with $1.50 due, which were not due and payable until the following October, and refused to credit assured with his dividend, unless the excessive and illegal assessment and dues were paid. Defendant then refused to pay the loss upon the sole ground, as stated by it in its letter denying liability, for failure to pay mortality call No. 126. When drawn into court it has been amending its pleadings from time to time in an endeavor to avail itself of defenses evidently not thought of at first, and which, under the law, it is estopped to assert. Besides, on December 31st, 1909, the date the alleged assessment was made, defendant had extended the time of payment upon $185,000.00 in assessments, carrying $609,000.00 of insurance, and there is but one legitimate conclusion to be drawn from this, and that is that it wished to lapse Barber's and other policyholders out, in order to divide the million dollars held by it, among certain policyholders—not to the beneficiaries after their death, but while they were still in the flesh (see provisions of

policy, Rec., p. 422). It lapsed out policyholders all over this country about this time, as shown by the reports of the Appellate Courts, and we have no doubt of its purpose in this regard. Finally, defendant has knowingly made an illegal defense.

The defendant was not a trustee at all, but a business insurance corporation. Its duties under its contract were both adverse and antagonistic to the interests of the assured. The rules governing ordinary trustees cannot be applied to it in this case, but under all the authorities an ordinary trustee has no right to pay and enforce against his cestui que trust an unenforcible claim. The defendant, as a matter of law, did not exercise the degree of care usually exercised by an ordinary man in the management of his business affairs, and it cannot claim that it acted in good faith in exacting from its policyholders the 2 per cent tax in question. The plain words of the statute itself only permitted premiums to be assessed. It ought to have occurred to defendant that the word "premiums" did not mean assessments, for the defendant itself is highly technical in the use of all these terms. Besides, the defendant in this case did not show that the Superintendent of Insurance of the State of Missouri, ever at any time levied or assessed any such tax. All this, too, in the face of a decision of Supreme Court of Missouri, rendered in 1897, construing this very statute, in which the defendant's counsel partici-

pated, and of which it was bound to take notice, and of which it had actual knowledge, in which the Court held that the State had no right or authority to levy or assess any such tax. And this, also, in the face of another decision of that Court, rendered in June, 1906, holding the same thing. Surely it cannot help the situation for the defendant to contend, as it does, that it paid to the State Treasurer bills for taxes on its premiums, some of which were taxable, which included these assessments which were not taxable. If the defendant had been half as diligent in fighting an illegal and unjust tax, which it did not show was ever assessed against it, as it has been in trying to defeat the wife of one of its deceased policyholders, who, in order to hover under the protecting wing of a benevolent equitable rule, now claims as its cestui que trust, after he had paid his insurance for seventeen years, failed to pay one illegal assessment, the tax in question would never have been exacted from assured and this issue would never have arisen in this case.

But these are all questions of fact which have been decided by the trial court and the Supreme Court of Missouri. It is not within the jurisdiction of this Court to review the decision of a state court upon a question of fact.

Western Union Tel. Co. v. Call Pub. Co., 181 U. S. 92;
Keokuk, Etc., Bridge Co. v. Illinois, 175 U. S. 626;
Atchison, Etc., R. Co. v. Matthews, 174 U. S. 96;
Chicago, Etc., R. Co. v. Chicago, 166 U. S. 226;
Egan v. Hart, 165 U. S. 188;
Dower v. Richards, 151 U. S. 658.

We respectfully submit that the judgment of the Supreme Court of Missouri should be affirmed.

Respectfully submitted,

CHARLES E. MORROW,
Attorney for Defendant in Error.

ROBERT KELLEY,
Of Counsel.

# SUPREME COURT OF THE UNITED STATES.

No. 161.—October Term, 1920.

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| Hartford Life Insurance Company, Plaintiff in Error, vs. Cecilia Blincoe, Administratrix of the Estate of Rosa Barber, Deceased. | In Error to the Supreme Court of the State of Missouri. |

[February 28, 1921.]

Mr. Justice McKenna delivered the opinion of the Court.

This is the second writ of error in this case. The opinion upon the first writ is reported in 245 U. S. 146. The suit here is, as it was there, upon a certificate of qualified life insurance, issued to Frank Barber and payable at his death to his wife, the plaintiff, who has since died and her administratrix has been substituted as defendant in error.

The defense here is, as it was there, that Barber failed to pay the mortuary assessment levied January 29, 1910, known as quarterly call No. 126 and that the failure voided the policy by its terms.

In that case Mrs. Barber recovered judgment, which we reversed on the ground that in rendering it the State Court disregarded a judgment of a Connecticut court which had jurisdiction of the subject matter and the parties including Barber.

Upon the return of the case to the State Court a new trial was had that resulted again in a verdict and judgment for Mrs. Barber. They were affirmed by the Supreme Court of the State. 279 Mo. 318.

To that affirmance this writ of error is directed, and the question presented is, did the Supreme Court proceed in consonance with our decision. The extent of our decision is, therefore necessary to consider and what it directed. The determination is in the issue that was presented and passed upon.

By reference to the report of the case (245 U. S. 146) it will be seen that the Supreme Court rested the judgment reviewed on

the invalidity of the assessment and that the non-payment of the latter did not, upon two grounds, work a forfeiture of the insurance: (1) Under the condition of the funds of the Company the assessment was for a larger amount than was necessary to pay death losses; (2) The charter of the company required all its affairs to be managed and controlled by a board of not less than seven directors, and that the assessment was not levied by the board. These rulings we held to be "in the teeth of the Connecticut adjudication which held that it was proper and reasonable for the company to hold and even collect in advance in order to enable it to pay losses properly". It was hence decided that the trial court in rendering judgment against the Hartford Company, and the Supreme Court in affirming the judgment, did not give "full faith and credit to the Connecticut record." The reasons for the conclusion we need not repeat.

With this ruling the Supreme Court was confronted upon its reconsideration of the case and the freedom of decision that remained to it, and resolved that we had left untouched any consideration of the elements constituting the assessment. And that it was at liberty to decide, and decided, that a tax, asserted by the Company to have been imposed by the laws of Missouri, had been unlawfully included in the assessment and that, therefore, the assessment was void and its non-payment did not work a forfeiture of Barber's insurance. To the contention of the company that such holding was precluded by our opinion, it was replied that the matter presented purely a question arising under the laws of the State and that this court "did not intend by its judgment to adjudicate to the contrary."

The decision of the court that the Hartford Company was not subject to the tax that it had included in its assessment was not new. It was a repetition of the ruling made in *Northwestern Masonic Aid Association* v. *Waddill*, 138 Mo. 628, in 1897, and should have been known to the Hartford Life Ins. Company at the time it made the assessment and mortuary call. The ruling has been again repeated in *Young* v. *Hartford Company*, and upon the authority of those cases the court decided that the tax was not applicable to companies doing business on the assessment plan and that on that plan the Hartford Company was doing business.

The Hartford Company contests the latter ruling and as dependent upon it, the other ruling, that is, that the Company was not subject to the tax, and asserts besides that the effect of the inclusion of the tax in the assessment was presented to this court on the former writ of error and whether it was authorized by the Connecticut decree, and that the answers were in the affirmative. In other words passed upon the power to make and the elements that made the assessment. Counsel say "this court could not have held that this assessment was authorized by the Connecticut decree and at the same time hold that it was void because it included the fifteen cents' tax." To sustain this view of the case the opinion is quoted as follows: "It is obvious from the evidence that this assessment was levied in the usual way adopted by the company and tacitly sanctioned by the Connecticut judgment."

Counsel, however, admits that the question of the inclusion of the tax was not discussed, but insists that "the question was in the record, was necessarily involved, and was presented." And invokes the presumption that whatever was within the issue was decided. In other words, that the case was conclusive not only of all that was decided, but of all that might have been decided.

From our statement of the issues it is manifest that the quotation from the opinion has other explanation than counsel's, and we need not dwell upon the presumption invoked or the extent of its application in a proper case. The question of the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, or its effect upon a particular issue or question in some other case is not here involved. The most that can be said of any question that was decided is that it became the law of the case and as such binding on the Supreme Court of the State, and to what extent binding is explained in *Messenger* v. *Anderson*, 225 U. S. 436. Certainly omissions do not constitute a part of a decision and become the law of the case, nor does a contention of counsel not responded to. The element of taxes in the assessment was not considered by the Supreme Court and in this court the Connecticut judgment and its effect were the prominent and determining factors. The question of the inclusion of the tax was not discussed or even referred to. The only question considered was the powers given to the directors of the company by the Connecticut charter and the effect that was

to be assigned to the Connecticut judgment as that of a court having jurisdiction to decide what powers the charter conferred or required. It is hardly necessary to say that the tax law of Missouri was no part of the charter. It was a condition the company encountered and became subject to in Missouri.

It was urged, it is true, in the brief of counsel that the assessment "was void because it included money for taxes erroneously claimed to be enacted [exacted] under the laws of Missouri." No notice, however, was taken of the contention and no influence given to it or to the effect it asserted. If it made any impression at all it was obviously as a state question dependent upon the state statutes upon which we would naturally not anticipate the state courts, the case necessarily going back to them.

Nor may we judge of the action of the Supreme Court of the State upon the tax because of its size, nor yield to the contention of the company that it, the company, had not accepted the assessment plan of insurance but was doing business on the premium plan and, therefore, subject to the tax which it had included in the assessment. These are state questions and are not within our power to review.

It is further contended by the Hartford Company that the Supreme Court permitted the recovery of damages and attorney's fees under the provisions of a statute of the State although there was no evidence in support thereof except the delay in payment of the claim for insurance, notwithstanding, it is further said, the company "had prevailed on every issue that had theretofore been presented," and that by this action the Company was deprived of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

In support of its contention the Company cites Section 7068 of the Revised Statutes of Missouri which, it is said, authorizes such recovery only "if it appear from the evidence that such company [insurance company] has vexatiously refused to pay" loss under a policy, and no evidence was offered on either trial to show the existence of the condition prescribed by the statute. The immediate answer to the contention is that what the statute prescribed was for the courts of the State to determine and their

construction is not open to our review though we might consider its application to the circumstances of the case to be rather hard. And it would, we think, be extreme to hold that the statute or its construction is a violation of the Fourteenth Amendment.

*Judgment affirmed.*

Mr. Justice HOLMES, Mr. Justice VAN DEVANTER and Mr. Justice MCREYNOLDS, dissent

A true copy.

Test:

*Clerk Supreme Court, U. S.*